

§ 39-2-304

MT LEGISLATIVE HISTORY

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Chapter 482 1987

Bill H _____ S 338

Original bill & hist. ☒ c

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) _____ c

Hearing Date(s) _____ c

3/18/87 ☒ c

2/17/87 ☒ c

_____ c

_____ c

_____ c

_____ c

Date Out 3/24/87 ☒ c

2/20/87 ☒ c

Did this bill originate in an interim committee? _____ Yes ☒ No

Committee _____

Report _____

SENATE FINAL STATUS

3/03 REFERRED TO TAXATION
 3/26 HEARING
 4/03 COMMITTEE REPORT--BILL CONCURRED
 4/07 2ND READING CONCURRED 93 0
 4/08 3RD READING CONCURRED 89 1

RETURNED TO SENATE
 4/10 SIGNED BY PRESIDENT
 4/11 SIGNED BY SPEAKER

4/11 TRANSMITTED TO GOVERNOR
 4/16 SIGNED BY GOVERNOR
 CHAPTER NUMBER 506 EFFECTIVE DATE: 4/16/87

SB 336 INTRODUCED BY MANNING
 REVISE VIDEO POKER LICENSING LAW

2/14 INTRODUCED
 2/14 REFERRED TO BUSINESS & INDUSTRY
 2/14 FISCAL NOTE REQUESTED
 2/19 HEARING
 2/19 FISCAL NOTE RECEIVED
 2/19 TABLED IN COMMITTEE

SB 337 INTRODUCED BY MANNING, LYNCH, HARRINGTON, ET AL.
 CLARIFY PROPERTY TAX EXEMPTION OF SURVIVING SPOUSE
 OF DISABLED VETERAN

2/14 INTRODUCED
 2/14 REFERRED TO TAXATION
 2/14 FISCAL NOTE REQUESTED
 2/21 FISCAL NOTE RECEIVED
 2/25 HEARING
 3/02 COMMITTEE REPORT--BILL PASSED
 3/04 2ND READING PASSED 50 0
 3/06 3RD READING PASSED 46 0

TRANSMITTED TO HOUSE
 3/09 REFERRED TO TAXATION
 3/27 HEARING
 4/06 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 4/09 2ND READING CONCURRED 95 1
 4/10 3RD READING CONCURRED 94 0

RETURNED TO SENATE WITH AMENDMENTS
 4/15 2ND READING AMENDMENTS CONCURRED 50 0
 4/15 3RD READING AMENDMENTS CONCURRED 50 0
 4/17 SIGNED BY PRESIDENT
 4/20 SIGNED BY SPEAKER

4/20 TRANSMITTED TO GOVERNOR
 4/23 SIGNED BY GOVERNOR
 CHAPTER NUMBER 594 EFFECTIVE DATE: 10/01/87

✓ SB 338 INTRODUCED BY BOYLAN, RAPP-SVRCEK, VINCENT, ET AL.
 REGULATE TESTS OF BLOOD AND URINE OF EMPLOYEES AND
 PROSPECTIVE EMPLOYEES

2/14 INTRODUCED
 2/14 REFERRED TO JUDICIARY ✓
 2/17 HEARING
 2/21 COMMITTEE REPORT--BILL PASSED AS AMENDED
 2/24 2ND READING PASSED 50 0
 2/25 3RD READING PASSED 50 0

SENATE FINAL STATUS

TRANSMITTED TO HOUSE
 3/03 REFERRED TO JUDICIARY ✓
 3/18 HEARING
 3/24 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/28 2ND READING CONCURRED 92 0
 3/30 3RD READING CONCURRED 91 7

RETURNED TO SENATE WITH AMENDMENTS
 4/03 2ND READING AMENDMENTS CONCURRED 50 0
 4/04 3RD READING AMENDMENTS CONCURRED 49 0
 4/08 SIGNED BY PRESIDENT
 4/10 SIGNED BY SPEAKER

4/10 TRANSMITTED TO GOVERNOR
 4/15 SIGNED BY GOVERNOR
 CHAPTER NUMBER 482 EFFECTIVE DATE: 10/01/87

SB 339 INTRODUCED BY BOYLAN, SWIFT
 REGULATE GOVERNMENT EMPLOYEE INVOLVEMENT IN POLITICS

2/14 INTRODUCED
 2/14 REFERRED TO STATE ADMINISTRATION
 2/14 FISCAL NOTE REQUESTED
 2/17 FISCAL NOTE RECEIVED
 2/19 HEARING
 2/20 ADVERSE COMMITTEE REPORT ADOPTED 47 2

SB 340 INTRODUCED BY SEVERSON, CODY, PATTERSON, ET AL.
 ELIMINATE TAX ON PRODUCER-HELD GRAIN IN STORAGE,
 LIVESTOCK, AND POULTRY

2/14 INTRODUCED
 2/14 REFERRED TO TAXATION
 2/14 FISCAL NOTE REQUESTED
 2/20 FISCAL NOTE RECEIVED
 2/25 HEARING
 3/09 COMMITTEE REPORT--BILL PASSED AS AMENDED
 3/11 2ND READING PASSED 46 1
 3/13 3RD READING PASSED 49 1

TRANSMITTED TO HOUSE
 3/13 REFERRED TO TAXATION
 3/30 HEARING
 4/07 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 4/08 REVISED FISCAL NOTE REQUESTED
 4/08 REVISED FISCAL NOTE RECEIVED
 4/10 2ND READING CONCURRED AS AMENDED 66 29
 4/13 3RD READING CONCURRED 81 15

RETURNED TO SENATE WITH AMENDMENTS
 4/16 2ND READING AMENDMENTS NOT CONCURRED 49 1
 4/16 CONFERENCE COMMITTEE APPOINTED
 4/21 CONFERENCE COMMITTEE REPORT
 4/22 CONFERENCE COMMITTEE DISSOLVED

HOUSE
 4/20 CONFERENCE COMMITTEE APPOINTED
 4/20 CONFERENCE COMMITTEE REPORT
 4/21 2ND READING CONFERENCE COMMITTEE
 REPORT REJECTED 52 46
 4/22 CONFERENCE COMMITTEE DISSOLVED

SENATE

1 *Senate* BILL NO. *338*
2 INTRODUCED BY *Boylan* *Supp. House* *Vincent* *Smith*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE TESTING
5 OF BLOOD AND URINE OF EMPLOYEES AND PROSPECTIVE EMPLOYEES;
6 AND AMENDING SECTION 39-2-304, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 39-2-304, MCA, is amended to read:

10 "39-2-304. Lie detector tests prohibited -- exception
11 regulation of blood and urine testing. (1) No person, firm,
12 corporation, or other business entity or representative
13 thereof shall require:

14 (a) as a condition for employment or continuation of
15 employment, any person to take a polygraph test or any form
16 of a mechanical lie detector test;

17 (b) as a condition for employment, any person to
18 submit to a blood or urine test; and

19 (c) as a condition for continuation of employment, any
20 employee to submit to a blood or urine test unless:

21 (i) the employer has demonstrable evidence that the
22 employee's faculties are impaired on the job as a result of
23 illegal drug use;

24 (ii) the employee's impairment presents a clear and
25 present danger to his own safety or the safety of others;

1 (iii) the employer gives the employee the opportunity,
2 at the employer's expense, to obtain a confirmatory test of
3 the blood or urine by an independent laboratory; and

4 (iv) the employee is given the opportunity to rebut or
5 explain the results of either test or both tests.

6 (2) Adverse action may not be taken against an
7 employee tested under subsection (1)(c) if the employee
8 presents a reasonable explanation or medical opinion
9 indicating that the results of the test were not caused by
10 illegal drug use.

11 (3) A person who violates this section is guilty of a
12 misdemeanor.

13 ~~(2) This section shall not apply to public law~~
14 ~~enforcement agencies.~~

-End-

SENATE BILL NO. 338

INTRODUCED BY BOYLAN, RAPP-SVRCEK, VINCENT, STRIZICH,
PINSONEAULT, BRADLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE TESTING
OF BLOOD AND URINE OF EMPLOYEES AND PROSPECTIVE EMPLOYEES;
AND AMENDING SECTION 39-2-304, MCA."

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"39-2-304. Lie detector tests prohibited -- exception
regulation of blood and urine testing. (1) No person, firm,
corporation, or other business entity or representative
thereof shall require:

(a) as a condition for employment or continuation of
employment, any person to take a polygraph test or any form
of a mechanical lie detector test;

(b) as a condition for employment, any person to
submit to a blood or urine test, EXCEPT FOR EMPLOYMENT IN
HAZARDOUS WORK ENVIRONMENTS OR IN JOBS THAT--INVOLVE THE
PRIMARY RESPONSIBILITY OF WHICH IS SECURITY, PUBLIC SAFETY,
OR FIDUCIARY RESPONSIBILITY; and

(c) as a condition for continuation of employment, any
employee to submit to a blood or urine test unless:

~~(i) the employer has demonstrable evidence~~ BELIEVES

HAS REASON TO BELIEVE that the employee's faculties are
impaired on the job as a result of ALCOHOL CONSUMPTION OR
illegal drug user.

~~(ii) the employee's impairment presents a clear and
present danger to his own safety or the safety of others;~~

(2) PRIOR TO THE ADMINISTRATION OF A DRUG OR ALCOHOL
TEST, THE PERSON, FIRM, CORPORATION, OR OTHER BUSINESS
ENTITY OR ITS REPRESENTATIVE SHALL ADOPT A WRITTEN DRUG
TESTING PROCEDURE AND MAKE IT AVAILABLE TO ALL PERSONS
SUBJECT TO DRUG TESTING. A DRUG TESTING PROCEDURE MUST
PROVIDE FOR THE:

(A) COLLECTION OF A BLOOD OR URINE SPECIMEN IN A
MANNER THAT MINIMIZES INVASION OF PERSONAL PRIVACY WHILE
ENSURING THE INTEGRITY OF THE COLLECTION PROCESS;

(B) COLLECTION OF A QUANTITY OF SPECIMEN SUFFICIENT TO
ENSURE THE ADMINISTRATION OF SEVERAL TESTS;

(C) COLLECTION, STORAGE, AND TRANSPORTATION OF THE
SPECIMEN IN TAMPER-PROOF CONTAINERS;

(D) ADOPTION OF CHAIN-OF-CUSTODY DOCUMENTATION
PROCEDURES IDENTIFYING HOW THE SPECIMEN WAS HANDLED AND
TESTED;

(E) VERIFICATION OF DRUG TEST RESULTS BY TWO OR MORE
DIFFERENT TESTING PROCEDURES BEFORE JUDGING A DRUG TEST
POSITIVE; AND

(F) PROHIBITION OF THE RELEASE OF DRUG TEST RESULTS,

1 EXCEPT AS AUTHORIZED BY THE PERSON TESTED OR AS REQUIRED BY
2 A COURT OF LAW.

3 ~~(iii) the employer gives the employee~~

4 (3) THE PERSON, FIRM, CORPORATION, OR OTHER BUSINESS
5 ENTITY OR ITS REPRESENTATIVE SHALL PROVIDE A COPY OF DRUG OR
6 ALCOHOL TEST RESULTS TO THE PERSON TESTED AND PROVIDE HIM
7 the opportunity, at the employer's expense OF THE PERSON
8 REQUIRING THE TEST, to obtain a confirmatory test of the
9 blood or urine by an independent laboratory; and SELECTED BY
10 THE PERSON TESTED.

11 ~~(iv) the employee is~~ THE PERSON TESTED MUST BE given
12 the opportunity to rebut or explain the results of either
13 test or both tests.

14 ~~(2)(4)~~ Adverse action may not be taken against an A
15 employee PERSON tested under subsection SUBSECTIONS (1)(B),
16 (1)(c), (2), AND (1)(E) (3) if the employee PERSON TESTED
17 presents a reasonable explanation or medical opinion
18 indicating that the results of the test were not caused by
19 ALCOHOL CONSUMPTION OR illegal drug use.

20 ~~(3)(5)~~ A person who violates this section is guilty of
21 a misdemeanor.

22 ~~(2) This section shall not apply to public law~~
23 ~~enforcement agencies."~~

-End-

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 17, 1987

The thirtieth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 17, 1987 by Chairman Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL 338: Senator Paul Boylan, Senate District 39, introduced SB 338, which is an act to regulate the testing of blood and urine of employees and prospective employees. He told a story about his own dairy farm and how the milk inspectors tested the milk for a virus, and found it. They shut him down without a second opinion. Senator Boylan said when he got a second opinion, the milk tested negative to the virus. He felt a drug test of humans or animals should get a second chance in the testing process.

PROPOSERS: Steve Ungar, Bozeman attorney, felt the bill should be fair to both, the employee and employer because currently, the drug testing is not fair to both sides. He said there are no set guidelines in the law now to follow. He felt this bill would give a second chance to both, employee and employer. He believed the guidelines set up in the bill will prevent employers from lawsuits. He gave the committee some information on drug testing. (Exhibits 1 and 2)

Lynn Hetland, representing herself, favored the bill because drug testing is critical for many of today's jobs. She said as far as drug testing goes, a person has to watch the employee give the specimen, to know it wasn't tampered with. She said there should be guidelines for the cleanliness of a container, and proper labeling of the urine sample is very important. She said an employer should keep track of who handled the sample also.

Jim Murry, AFL-CIO, supported the bill. (Exhibit 3)

Dan Edwards, Oil, Chemical and Atomic Workers International Union, Billings, Montana, supported the bill. (Exhibit 4)

Eileen C. Robbins, R. N., representing The Montana Nurses' Association, favored the bill. (Exhibit 5)

Francis Marceau, U.T.U. Local 978, gave the committee a fact sheet for SB 338, in favor of the bill. (Exhibit 6)

Susan Gregory, a drug tested employee of Burlington Northern, said the drug test she submitted to, without just cause, was humiliating and was not performed fairly. She explained how the test was administered, and that it showed positive. She explained they wouldn't give her a second test to make sure they were correct in their findings. She lost her job at Burlington Northern because of the one test.

George Luckner, BN employee, explained his story on a drug testing incident that happened over two years ago. He said he was cleaning up a derailment of a train, which he had no part in as far as the derailment, when his (chief) boss asked him to take a drug test. He said the drug test was embarrassing because a woman watched him give the specimen from approximately 10 inches distance. He said they told him nine days later that it tested positive. He admitted that 5 years previous to the drug test, he had smoked pot, but had not done it since that time. He was not given a second testing. He said he was asked to sign a form saying, "I was on a drug at the time of the accident." He refused and he lost his job. He explained that he has seen people drunk on the job and the boss covers up for them. He supported the bill because of his situation.

Bill Leary, Montana Hospital Association, supported the bill because it is fair to both parties involved.

Glen Kincaid, representing himself, said he tested positive for drugs at Burlington Northern; however, he said he went through arbitration and the court system and won his case and got his job back. He said he had never used illegal drugs in his life. He supported the bill.

Jeff Renz, ACLU of Montana, stated that "probably cause" for drug testing must be found and verified before a person can be subjected to a test. He said most statistics show one of eleven people who tested positive to drug test actually used illegal drugs. He explained how studies

have shown people who had poppy seeds on food have tested positive for heroin. He said the testing is not a sound system yet because of all the different types of chemical reactions people can have to different legal drugs, like hay fever medicine testing as marijuana, or just to food like the poppy seed bread. He supported the bill.

Bill Leaphart, representing himself, favored the bill because drug testing is done for safety purposes and the test should be done properly. He said the test should be fair, but should be done for the safety of others.

OPPONENTS: John Fitzpatrick, Pegasus Gold Corp., opposed the bill because the drug testing procedure should not have two specimen samples, but one, and that one would be used for the two tests. He explained how dangerous it is for his company to have a person on drugs working at the gold company. He explained how he just caught someone today smoking a marijuana joint on the job. He gave the committee amendments for SB 388, which he felt were appropriate. (Exhibit 7)

DISCUSSION ON SENATE BILL 338: Senator Pinsonneault asked why the testing person has to be so close to the person giving the specimen. Mr. Renz said it is amazing how people will tamper with a specimen while giving it. He gave an example of how people will put salt on their fingers and get it into the urine so it will destroy any chemicals in the sample. Mr. Fitzpatrick echoed the same reasoning for getting so close; it will be a cleaner test.

Senator Blaylock asked Mr. Fitzpatrick how many tested positive for "coke" at the Pegasus Corp. Mr. Fitzpatrick said two. Senator Mazurek asked if the two who tested positive petitioned against the test. Mr. Fitzpatrick said they did not.

Senator Boylan closed the hearing on Senate Bill 338.

CONSIDERATION OF SENATE BILL 226: Senator Halligan, Missoula, introduced the bill and said it was by the request of the Juvenile Justice Commission and amends the laws relating to the Youth Court.

Dorothy McCarter of the Attorney General's office explained the bill. Senator Halligan presented a statement of intent. (Exhibit 7A)

217147

J. DICKY

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
W. J. 12	ACLU of NY	338	X	
W. J. 11	Montana Lumber Co.	338	X	
W. J. 10	Bro Rwy ^d Airlines Clerts	338	X	
W. J. 9	Self	338	X	
W. J. 8	U.F.W local 978	" "	X	
W. J. 7	Montana Hospital Assn	338	X	
W. J. 6	Bil. Chamberlaine - Attorney	338	X	
W. J. 5	Self	338		
W. J. 4	Self	338	X	
W. J. 3	Mont. Youth Justice Cn.	226	X	
W. J. 2	ACLU	338	X	
W. J. 1	Pegasus Gold Corp	338		X
W. J. 0	Self		X	
W. J. 12	Self	338	X	
W. J. 11	Att. Gen	446	X	
W. J. 10	Bol. Comm. on X	226	X	
W. J. 9	13 Federal Dist	226	X	
W. J. 8	Mont. State AFL-CIO	338	X	

(Please leave prepared statement with Secretary)

Mandatory Unindicated Urine Drug Screening: Silly Chemical McCarthyism

In the late 1960s as the psychoactive drug abuse epidemic spread throughout this country, the advance of toxicologic technology prompted many troubled and well-intentioned persons to propose a new solution to this old plague: urine drug screening.

Many were looking hard for solutions. Probation department officials perceived the need to monitor parolees, many of methadone maintenance treatment programs for drug addiction sought to convert previously hopeless addicts into functioning citizens, and the US military was being harmed seriously by widespread, demoralizing psychoactive drug use among its personnel. Urine drug screening was established as one approach to deal with these complicated problems. At that time, I was actively involved in medical aspects of drug abuse and toxicology in one of the hot spots of this problem—southern California—that was being called "the largest open-air insane asylum in the world."

Concerned about hypocrisy, injustice, and infringements of liberties and aware that there were serious analytical problems in the theory and practice of toxicology, I wrote the following letter, which Franz Ingelfinger published in the *New England Journal of Medicine* in 1972.¹ Upon reading these reflections, I note that "the more things change the more they remain the same."

Urine Drug Screening: Chemical McCarthyism

As these devices new ways of watching you as 1984 draws nearer. An era of chemical McCarthyism is at hand and guilty until proven innocent is the new rule.

It is being recognized that urine drug screening in our society is now a commonplace event with far-reaching consequences. United States military personnel, amateur and professional athletes, race horses, probation parolees, program patients, and hospitalized overdose patients are being screened. In business employees and applicants as subjects for these screenings are losing freedom, a boxer's world title, an employee's job, and a soldier's combat ability may rest on these results.

Laboratories of variable quality and morality, generally not subject to assurance, control, or proficiency testing, have sprung into this business. The performance of even the "best" toxicology laboratories is grossly defective with frequent false-positives, false-negatives, and misidentifications. Error rates on unknown samples run as high as 20% to 70%.²

Many of error arise from the frequent unexplained "spots" found on chromatographic plates of urine, failure of confirmation by a second technique, variances regarding sensitivity, other legally available techniques by the subject, prolonged expiration of some of these legal drugs, specimen mix-ups, manual transcription errors, and, of course, in fact, the use of black-market drug-free urine voided from artificial micturition devices has prompted the creation of new job

categories of "micturition observers," who watch the urine from urinals to container—the police state par excellence.

It is important for the medical community to (1) recognize that the state of the art of urine drug screening is faulty and attempt to improve these techniques, (2) publicize the fact that these techniques are imperfect to prevent the general public from being duped into accepting them as laboratory truths, with resulting potential injustices, and (3) bring pressure to require that standards are set, regulations developed and followed, and quality control and proficiency testing applied and monitored for intrastate and interstate toxicology laboratories—by law, if necessary.

There is serious question as to whether urine drug screens should be done at all under current circumstances. Frequently incorrect laboratory data are worse than no laboratory data. The waste of money and the potential harm to individuals may exceed any benefits gained by these programs, except for the clinically ill person. Of course, hypocrisy flourishes here as it does in most other drug areas—i.e., the U.S. Army screens often exempt officers, and most screening programs ignore the principal drug of abuse—ethyl alcohol.

If we actually want to be serious about screening for psychoactive drugs that might alter behavior that matters (rather than playing public relation games), we should start by screening the highest officials in government, industry, labor, academia, etc., rather than the enlisted man at Fort Ord or some filing clerk somewhere.

GEORGE D. LUNDBERG, M.D.
Department of Pathology
University of Southern California
School of Medicine
Los Angeles

1. Fujimoto JM, Wang RH: A method of identifying narcotic analgesics in human urine after therapeutic doses. *Toxicol Appl Pharmacol* 16:106-131, 1970.
2. Sine HE, Murray MH: Role of state health departments in testing proficiency of drug abuse toxicology for intrastate clinical laboratories. *Clin Chem* 18:592, 1972.
3. Unpublished quality control data, California Association of Toxicologists, May 1972.
4. Unpublished data, Laboratory Standards Committee, Department of Hospitals, County of Los Angeles, June 1972.
5. Unpublished data, Contra Costa County Probation Department, March 1972.
6. Unpublished data, State of California, Department of Corrections, 1971.

Now, 14 years later, how have things changed and how have they remained the same?

1. The drug abuse epidemic continues to be a major phenomenon of our time. The number of abusers waxes and wanes and the drugs change but the problems remain, seemingly recalcitrant to whatever efforts we put forth. Psychoactive drugs continue to be widely available at relatively low cost and are widely used. People continue to die every day of both legal and illegal drugs, but much more of legal than illegal.

2. Urine drug screening technology has improved immensely. It is now possible for the vast majority of legal and illegal psychoactive drugs of abuse to be sought, found,

that the most commonly lethal drugs (ethyl alcohol and tobacco) continue not to be part of urine drug screening in most settings.

11. When people know their behavior is being observed they often change. There is no question but that the realization that observation in the form of urine drug screening may occur will prevent many healthy people from using illegal drugs. Thus, urine drug screening can have a salutary deterrent effect on the use of drugs. This is a strong argument in favor of unannounced screening. Incidentally, this preventive effect is operative whether or not the analyses are actually done. Some have suggested that one should simply collect the specimens and throw them away (a classic sink test) since as long as the specimen donors do not realize what is going on, the beneficial effect would be the same and the process would be much less expensive and hazardous.

12. Whether or not civil liberties are violated in urine drug screening has not been adequately addressed. The question of whether any individual who is apparently functioning normally with no demonstrated impairment can be subjected to a form of intimate body search remains a serious problem to be worked out in the courts. If a prospective employee is fully informed that urine drug screening is part of the normal preemployment procedure, the applicant must accept such testing as a condition of employment. However, to initiate a policy of random, unannounced, undicated (no probable cause) urine drug screening during one's employment tenure is an entirely different question. Certainly, in a purely practical sense (leaving ethical questions aside) it wouldn't make any difference to a person who is drug free to be tested periodically—if there were not the specter of specimen mix-ups, erroneous false-positives, and direct observation, which will be thought of as odious and demeaning by many. These risks are very real.

13. How much will it cost? It is estimated that the direct and indirect costs of specimen procurement, transportation, analysis, and reporting is costing the military about \$90 to \$100 per specimen, not including time lost from work. If one theorized that a similar approach with only one specimen per employee per year would be utilized for our entire US work force, one comes up with a cost to society around \$8 to \$10 billion per year. This is terrific for the laboratory industry and all the attorneys who will argue these cases in court, but should we spend that kind of money on this process? In fact, we have not found one proper cost-benefit analysis of this process in any peer review journal.

Those of us in the drug-industrial complex are, of course, elated by the symbolic importance of the new billion dollar investment in the "war against drugs." However, the probability of serious and lasting benefit for any large group in society other than the politicians and bureaucrats produced by such ill-conceived spending is very low.

Interestingly, recent data indicate that deaths and serious impairment resulting from the use of psychoactive drugs in this country have been decreasing of late. Thus, it is a particularly opportune time for politicians to rail against psychoactive drug abuse and increase spending to counteract it since it is on a downslope anyway. They can gain credit for the decline whether or not they had anything whatsoever to do with the changes.

The delicate questions of personal liberty and the doctor-patient relationship remain intact with. A sensible person must conclude that the individualized with judgment and restraint on a by-case basis, especially when dealing with sensitive positions like commercial pilots, air traffic controllers, and surgeons.

There is, of course, no way to get rid of psychoactive drugs in a free society. They are too easy to make, too easy to transport, and too easy to use. Humans are unstable animals and show no signs of becoming more stable.

What should be done? We have technology. What we don't have but need are cost-benefit analyses in specific circumstances.

It is wonderful that the tide of popular opinion should be rolling against the abuse of psychoactive drugs. We should keep it rolling. However, the adverse effects of excessive zeal on individuals, organizations, and society are enormous. We should not perform actions that are likely to cause harm as good. Salient points that must be ignored include:

- If the technology is to be applied, it must be of excellent accuracy and reliability.
- Due process for individuals must be ensured.
- Hypocrisy must be minimized.
- Any actions taken must be with the recognition that the parties involved may end up in court; this is a fact of life.
- For persons in jobs that involve assumption of responsibility for other individuals, or for society, as in the application of mandatory unannounced random drug screening is more justifiable than for a private position without such responsibilities.
- For highly visible individuals and professions, random screening may be beneficial from a public relations or exemplary standpoint. Television actors and along with professional athletes, might bear this in mind.
- For employees or others who show evidence of impairment, the employee assistance program approach should be fully used.

In summary, psychoactive drug abuse is a phenomenon of our time as it has been throughout recorded time. Laws of law enforcement or punitive activities are likely to have much effect in a free society. Peer pressure remains the principal force at all ages. If our society feels the problems of drug use are so great as to justify the loss of individual freedoms, mandatory random urine drug screening can be done. However, if this is to be the case, it must come from a group societal decision by the vote of an informed electorate, probably through state-by-state referenda. Such a national application would probably require an amendment to the US Constitution. The issue is important.

The times remain interesting. Fortunately, the innocent until proven guilty still obtains in our society.

George D. Lundberg

1. Lundberg GD. Urine drug screening. *Chemical Abstracts* 1978; 90:123-124.
2. Hansen HJ, Caudill SD, Boone J. Crises in drug testing. *JAMA* 1987; 257:2382-2387.
3. Ziporyn T. Designer drugs. *JAMA* 1986; 256:3061-3063.

Detectable by Drug Screen

...ally screens for the presence of each of the drugs listed below (by both generic and trade name) in serum and qualitative in urine and gastric fluid.

Anticonvulsants:

Carbamazepine (Tegretol®)
 Celontin® (Methsuximide)
 Depakene® (Valproic Acid)
 Dilantin® (Phenytoin)
 Ethosuximide (Zarontin®)
 Methsuximide (Celontin®)
 Phenytoin (Dilantin®)
 Tegretol® (Carbamazepine)
 Valproic Acid (Depakene®)
 Zarontin® (Ethosuximide)

Sedatives:

Doriden® (Glutethimide)
 Ethchlorvynol (Placidyl®)
 Meproamate (Miltown®, etc.)
 Methypylon (Noludar®)
 Methaqualone (Quaalude®)*
 Miltown® (Meproamate)
 Noludar® (Methypylon)
 Placidyl® (Ethchlorvynol)
 Quaalude® (Methaqualone)*
 Glutethimide (Doriden®)

Major Tranquilizers:

Chlorpromazine (Thorazine®)*
 Mellaril® (Thioridazine)*
 Thioridazine (Mellaril®)*
 Thorazine® (Chlorpromazine)*

Antidepressants:

Amitriptyline (Elavil®)*
 Aventyl® (Nortriptyline)*
 Desipramine (Norpramine®)*
 Doxepin (Sinequan®)*
 Elavil® (Amitriptyline)*
 Imipramine (Tofranil®)*
 Ludiomil® (Maprotiline)*
 Maprotiline (Ludiomil®)*
 Norpramine® (Desipramine)*
 Nortriptyline (Aventyl®)*
 Sinequan® (Doxepin)*
 Surmontil® (Trimipramine)*
 Tofranil® (Imipramine)*
 Trimipramine (Surmontil®)*

Analgesics:

Acetaminophen (Tylenol®)*
 Acetylsalicylate (Aspirin®)
 Aspirin® (Acetylsalicylate)
 Advil® (Ibuprofen)
 Butazolidin® (Phenylbutazone)
 Darvon® (Propoxyphene)
 Ibuprofen (Motrin®, Advil®
 Nuprin®)
 Motrin® (Ibuprofen)
 Naprosyn® (Naproxen)
 Naproxen (Naprosyn®)
 Nuprin® (Ibuprofen)
 Phenylbutazone (Butazolidin®)
 Propoxyphene (Darvon®)
 Salicylate
 Tylenol® (Acetaminophen)

Sympathomimetics:

None

Stimulants:

Caffeine®
 Nicotine*
 Strychnine*
 Theobromine® (cacao bean products)
 Theophylline (aminophylline, etc.)

* Not detectable in serum are also detectable in urine, except glutethimide. Because the minor tranquilizers are extensively metabolized, they are not likely to be detected in urine unless an overdose is taken. The following are detected in urine but not in serum.

Analgesics:

Demerol® (Meperidine)
 Dolophine® (Methadone)
 Meperidine (Demerol®)
 Methadone (Dolophine®)
 Opiates (by class)
 Pentazocine (Talwin®)
 Talwin® (Pentazocine)

Major Tranquilizers:

Chlorpromazine (Thorazine®)
 Compazine® (Prochlorperazine)
 Mellaril® (Thioridazine)
 Prochlorperazine (Compazine®)
 Stelazine® (Trifluoperazine)*
 Thioridazine (Mellaril®)
 Thorazine® (Chlorpromazine)
 Trifluoperazine (Stelazine)*

Stimulants:

Amphetamine (Benzedrine®)
 Angel Dust (Phencyclidine)
 Benzedrine® (Amphetamine)
 Cocaine
 Desoxyn® (Methamphetamine)
 Dexatrim® (Phenylpropanolamine)
 Metamphetamine (Desoxyn®)
 Methylphenidate (Ritalin®)
 Phencyclidine (Angel Dust)
 Phenylpropanolamine (Dexatrim®, etc.)
 Ritalin® (Methylphenidate)

* Only at supratherapeutic levels.

* Only if >15 µg/mL.

* Only in serum at grossly elevated concentrations—rely on urine for screening.



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARYZIP CODE 59624
406/442-1708TESTIMONY OF JIM MURRY ON SENATE BILL 338 BEFORE THE SENATE JUDICIARY COMMITTEE,
FEBRUARY 17, 1987

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD MY NAME
IS JIM MURRY AND I'M HERE TODAY ON BEHALF OF THE MONTANA STATE AFL-CIO TO
TESTIFY IN SUPPORT OF SENATE BILL 338.

WE BELIEVE THAT THE WORKPLACE SHOULD REMAIN DRUG AND ALCOHOL
FREE. ALCOHOLISM AND DRUG ABUSE CAN SERIOUSLY IMPAIR A PERSON'S PHYSICAL
AND MENTAL PERFORMANCE WHEN USED ON-THE-JOB. AND THE SERIOUS SIDE-EFFECTS
CAUSED BY DRUG AND ALCOHOL ADDICTIONS ARE HARMFUL NOT ONLY TO THE PERSON
INVOLVED, BUT ALSO TO FAMILY, FRIENDS AND CO-WORKERS.

IT'S IMPORTANT TO UNDERSTAND THAT ALCOHOL AND DRUG ABUSE ARE
ILLNESSES AND THAT PEOPLE SUFFERING FROM THESE ADDICTIONS NEED TREATMENT
AND MEDICAL HELP; NOT PUNISHMENT.

UNFORTUNATELY, IT HAS BECOME INCREASINGLY COMMON FOR EMPLOYERS
BOTH IN THE PUBLIC AND PRIVATE SECTORS, TO USE RANDOM DRUG TESTING AS A
METHOD TO SCREEN ALL JOB APPLICANTS OR AS A CONDITION OF EMPLOYMENT.

WE STRONGLY OPPOSE THE USE OF RANDOM DRUG TESTS BECAUSE THEY
ARE INVASIONS OF PRIVACY AND VIOLATE PROTECTIONS AGAINST UNREASONABLE SEARCH
AND SEIZURE. PROVISIONS ENACTED IN ANY DRUG TESTING PROPOSAL MUST PROTECT
A WORKER'S CONSTITUTIONAL RIGHTS, WHILE AT THE SAME TIME PREVENTING AN ALCOHOL
OR DRUG IMPAIRED INDIVIDUAL FROM CONTRIBUTING TO AN UNSAFE WORKPLACE.

FEBRUARY 17, 1987

WE BELIEVE THAT THIS BILL HAS SAFEGUARDS TO PROHIBIT RANDOM AND INDISCRIMINATE DRUG TESTING AND PROTECTS THE CIVIL RIGHTS OF WORKERS.

BESIDES THE PRIVACY ISSUES INVOLVED IN RANDOM DRUG TESTING, WE ALSO CONTEND THAT DRUG TESTING PROCEDURES THEMSELVES ARE OFTEN FLAWED. FALSE POSITIVE TESTS CAN OCCUR AT LEAST 25 PERCENT OF THE TIME. THEY CAN BE TRIGGERED BY SUCH COMMON SUBSTANCES AS COLD MEDICATIONS, COUGH SYRUPS, CAFFEINE AND ASTHMA MEDICINES. WITH THIS HIGH DEGREE OF INACCURACY, WE ARE CONCERNED THAT EMPLOYEES WILL BE INACCURATELY LABELED AS SUBSTANCE ABUSERS AND DISCHARGED WITHOUT CAUSE.

HOWEVER, THIS BILL APPEARS TO ALLEVIATE MOST OF OUR CONCERNS OVER INACCURATE TEST RESULTS. EMPLOYEES HAVE THE OPPORTUNITY, AT THE EMPLOYER'S EXPENSE, TO CHALLENGE ANY TEST RESULT BY OBTAINING INDEPENDENT TESTS AT A LAB OF THEIR OWN CHOICE. ALSO, BY GIVING EMPLOYEES THE OPPORTUNITY TO REFUTE OR EXPLAIN POSITIVE TEST RESULTS, YOU BUILD SAFEGUARDS AGAINST FALSE ACCUSATIONS BY EMPLOYERS.

THE MONTANA STATE AFL-CIO BELIEVES THAT BOTH WORKERS AND EMPLOYERS SHOULD CONTINUE WORKING TOGETHER TO DEVELOP CONSTRUCTIVE SOLUTIONS TO DRUG AND ALCOHOL ABUSE. WE DO NOT BELIEVE THAT EMPLOYERS, WHO ARE INCREASINGLY CAUGHT IN THE HYSTERIA SURROUNDING DRUG USE, SHOULD USE IMPROPER OR PUNITIVE DRUG TESTING PROCEDURES. WE DEPLORE ANY DRUG TESTING MEASURES WHICH ARE ARBITRARY OR WHICH EXCESSIVELY INFRINGE ON THE RIGHTS OF EMPLOYEES.

BECAUSE THIS BILL SUFFICIENTLY PROTECTS WORKERS' RIGHTS AND ATTEMPTS TO REMEDY SUBSTANCE ABUSE PROBLEMS, WE URGE YOU TO SUPPORT SENATE BILL 338.

SENATE JUDICIARY

EXHIBIT NO. 3

DATE 2-17-87

S.B. 338

SB-338
(Proposing to Amend 39-2-304)

EXHIBIT NO. 4
DATE FEB. 17, 1987
BILL NO. SB 338

STATEMENT OF DAN C. EDWARDS
International Representative

Oil, Chemical and Atomic Workers International Union
P.O. Box 21635
Billings, MT 59104
669-3253

the SENATE JUDICIARY COMMITTEE, 10:00 am, February 17, 1987, Helena, Montana

Opening:

My name is Dan Edwards. I am an International Representative with the Oil, Chemical and Atomic Workers International Union. I live in Billings, but my area of assignment includes the entire State of Montana. I am also speaking on behalf of Montana State AFL-CIO on this Bill.

The Oil, Chemical and Atomic Workers International Union (OCAW) represents approximately 110,000 workers in the oil, chemical and related industries. As one of you, OCAW is vitally concerned about the abuse of alcohol and drugs in society. However, we are also vitally concerned that any policy or program that deals with the testing of workers for alcohol or drugs be based upon a "probable cause" basis.

Perhaps before I go any further, I should briefly tell of my background in this field. Prior to my transfer to Billings in the latter part of 1986, I was Director of Health and Safety for the International Union, located in Denver, Colorado. In that capacity, one of my areas of responsibility was to assist our Department in the development of a just and reasonable position regarding the testing of employees for alcohol and drugs by employers. For a period of nearly three years I spent about 80% of my time doing research in this area and assisting Local Unions across the Country in fighting unreasonable, unfair testing programs. This experience makes me qualified to address this most important Bill.

There is a wave of hysteria sweeping the United States today surrounding this matter--and small wonder with the President and First Lady being the Head Cheerleaders. We hear so much about the evils of drugs--and they are evil--that very little is being said about the many problems that are found regarding the adoption of workplace drug testing programs. Problems that deal with the accuracy of the testing, of the accurate reporting of the results of drug testing, of persons exposed to marijuana smoke, but not smoking it themselves, testing positive, of the absolute necessity for reasonable "sensitivity" or "cut off" levels for determining that an employee has tested positive for drugs, and of the stigma that can attach itself to a worker when that worker is required to "pee in the bottle".

First, I want to make it very clear that OCAW does not support or condone in any way whatsoever, the use of drugs or alcohol on-the-job, or coming to work under the influence of any substance. However, unless it can be demonstrated by clear, objective evidence that a worker is impaired on the job, or that a worker's job performance is effected, we believe that workers have the same rights as any other American against unwarranted employer intrusion into an employee's private life as from the workplace. IT IS NOT THE ROLE OF THE EMPLOYER TO BE SOCIETY'S POLICE. That's what this Bill SB-338 is all about.

The abuse of alcohol and drugs is not new. In fact, figures I have seen seem to indicate that in some areas the use (and abuse) of alcohol and drugs is actually declining as people become better informed about the hazards of their use. What is new, is the technology to cheaply detect the metabolites of certain drugs in a person's body fluids. In my sincere opinion, one of the major driving forces behind the rise of drug testing programs are the many company--most of them brand new companies that didn't even exist a few years ago--which see BIG BUCKS to be made by selling industry drug testing programs. Drug testing kits for the initial drug screen can be found for under \$5.00 each. Now any reputable drug testing company is going to require that a second test, using a different methodology be done to confirm the results since the tests used for the initial screening can have a high rate of error.

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atives. But, there are no laws that I'm aware of in any State in the
require confirmation testing to be done. I don't think it takes a real
to see that many companies, especially smaller companies, are not going to
to have the confirmation testing done--especially since the confirmation
is much more expensive (\$75-100.00). They are simply going to fire the
if they can.

I used the word "false-positive" just a minute ago. This term means that a
comes back as "positive" when in fact the drug or substance being tested for
is present in the sample. There are many reasons this can happen. Rather than
spend valuable time here today I have attached a copy of a study done by the
for Disease Control (CDC) which shows false-positive error rates as high
in drugs commonly tested for. This scientific study was published in the
Journal of the American Medical Association in April of 1985. If you take the time
to read this study you will see why caution is necessary.

A second thing about drug testing that most people aren't aware of is that
the tests we have been talking about do not detect the psychoactive ingredients
in a person's urine--they detect the metabolites of the drugs. In some cases, most
notably marijuana, the drug metabolites can remain stored in a person's body fat for
weeks. The metabolites do not cause impaired performance. In fact, all man-
ufacturers of drug testing kits are very careful to point out in their literature
that a positive test does not prove impairment, or under the influence.

It is for the above reasons, that even when drug testing is done in "for cause"
cases reasonable "sensitivity" or "cut off" levels must be established. The CCAM
spent a great deal of time and effort to determine what constitutes reasonable
sensitivity levels for the drugs commonly tested for. Our Legal Department and
Health and Safety Department collaborated with David Johnson, M.D., Professor of
Internal Medicine and Pharmacology and Chief of the Endocrinology Section at the
University Medical Center, University of Arizona College of Medicine, to arrive at
reasonable sensitivity levels--these are attached as Appendix A.

There are many other pieces that were we here today to talk about the development of reasonable drug testing policies between management and the Union, I would go into. Since, however, my purpose here today is to urge this Committee to pass this modest piece of legislation, I will end my prepared remarks at this point.

I would be pleased to answer any questions that members of the Committee might have.

Thank you.

Respectfully submitted,



Dan C. Edwards

The following levels of toxicity are reasonable and shall be utilized

Minimum guidelines:

Amphetamines (dextro-amphetamines, methamphetamine and phentermine);
Between 3 and 10 micrograms per mil

Barbituates (secobarbital, amobarbital, butabarbital, pentobarbital,
methobarbital):
Between 20 and 60 micrograms per mil

Prothiazepines (diazepam, desmethyldiazepam, chlorthiazepoxide, oxazepam):
Between 10 to 30 micrograms per mil

Phenylecgonine:
Between 6 and 60 micrograms per mil

Proteinoids:
Between 100 and 150 nanograms per mil

Propofolone:
3 to 10 micrograms per mil

Propofolone:
50 micrograms per mil

Opoids:
Morphine: 3 micrograms per mil
Codeine: 10 micrograms per mil
Phencyclidine: between 0.6 and 6 micrograms per mil

SENATE JUDICIARY

EXHIBIT NO.

4
2-17-87

BIL

B.B.338

Crisis in Drug Testing

Results of CDC Blind Study

J. Hansen, PhD; Samuel P. Caudill, PhD; D. Joe Boone, PhD

In response to questions about the reliability of the results of screening for drugs, we evaluated the performance of 13 laboratories, which are a total of 262 methadone treatment facilities, by submitting prereferred samples through the treatment facilities as patient samples (blind testing). Error rates for the 13 laboratories on samples containing barbiturates, amphetamines, methadone, cocaine, codeine, and morphine ranged from 1% to 94%, 19% to 100%, 0% to 33%, 0% to 100%, 0% to 100%, and 0% to 100%, respectively. Similarly, error rates on samples not containing these drugs (false-positives) ranged from 0% to 6%, 0% to 37%, 0% to 66%, 0% to 14%, 0% to 7%, and 0% to 10%, respectively. These blind tests indicate that greater care is taken with known evaluation samples than with unknown samples, (2) laboratories are often unable to detect drugs at concentrations called for by their contracts, and (3) the observed underreporting of drugs may threaten the treatment process. Drug treatment facilities should monitor the performance of their contract laboratories with control samples, preferably through blind testing.

JAMA 1985;253:2382-2387

From 1972 through 1981, the Centers for Disease Control (CDC), in cooperation with the National Institute on Drug Abuse, conducted a proficiency testing (PT) program for drug-abuse screening laboratories. In this program, ten drug-abuse urine samples were mailed quarterly to each participating laboratory.

From the Clinical Chemistry and Toxicology Section, Performance Evaluation Branch, Division of Laboratory Evaluation and Assistance (Drs Hansen and Boone); and Management Development and Laboratory Division (Dr Caudill), Laboratory Program, Centers for Disease Control, Atlanta. Dr Hansen is now with the National Institute for Environmental Safety and Health, Centers for Disease Control, Atlanta.

Reprint requests to Centers for Disease Control, Room 316, 1600 Clifton Rd NE, Atlanta, GA 30333 (Dr Boone).

Each laboratory received 40 "mailed PT" samples per year. The participants in the program tested the samples for the requested drugs and submitted a report for grading on each quarterly survey by the cutoff date. If at least 20% of the responses were correct, the laboratory was classified as "satisfactory"; otherwise, the laboratory was classified as "unsatisfactory."

Early in the program, allegations were made that some laboratories were not subjecting mailed PT samples to the same testing procedures as their routine patient samples. These claims prompted two CDC studies in which data were collected through an alternative mode of PT—the blind

test. This mode of testing requires the use of a dedicated surrogate office to introduce the test samples into the laboratory without the laboratory's knowledge (for example, a physician's office or a drug treatment facility). In these studies (one in 1973, with 24 laboratories, and another in 1975, with nine laboratories), results of mailed PT were compared with blind PT laboratory performance.¹ Although the percentage of drugs detected by laboratories in the two studies ranged from 76% to 100% (average, 98%) on mailed PT samples, the percentage on blind PT samples for the same laboratories testing identical samples ranged from 11% to 100% (average, 69%). Additional CDC blind studies (an initial study in 1978 conducted with the assistance of the Federal Bureau of Prisons and another in 1980 with the assistance of two treatment centers) provided results similar to those from the earlier CDC blind studies.² The percentage of drugs detected by the six laboratories ranged from 37% to 74% (average, 61%).

Supportive of the CDC blind studies, other investigators have reported on blind studies that showed error rates of a magnitude comparable with those found by the CDC. In one such study, in 1976, Gottheil et al³ reported blind testing results for a drug-screening laboratory that detected only 65% of the drugs in the samples.

Table 1.—Summary of Data on Drug or Drug Class Included in the 1981 Blind Study*

Drug or Drug Class	Centers for Disease Control's (CDC) MRLs, µg/mL	Concentration Range, µg/mL	No. of Challenges	
			Drug	Total
Barbiturates				
Phenobarbital	1.0	1.0-2.0	26	
Pentobarbital	1.0	1.2-3.0	5	31
Secobarbital	1.0	1.0-2.0	7	
Amphetamines				
D-amphetamine	1.0	1.0-2.0	32	56
Methamphetamine	1.0	1.0-3.0	24	
Methadone				
Methadone (parent)	1.0	1.0-2.0	44	88
Methadone (metabolite)†	1.0	1.0-2.0	44	
Cocaine				
Cocaine (parent)	2.0	2.0-4.0	23	67
Cocaine (metabolite)‡	4.0	4.0-5.0	34	
Opiates				
Codeine	0.5	0.6-2.0	40	118
Morphine (parent)§		0.1-0.8	39	
Morphine (metabolite)¶		0.9-1.6	39	
Others*				
Phencyclidine hydrochloride (PCP)	1.0	0.3-4.3	24	67
Methaqualone (Quaalude)		1.0-2.0	27	
Pentazocine (Talwin)		1.0-2.0	11	
Propoxyphene hydrochloride (Darvon)		3.0	3	
Cannabinoid (Δ ⁹ -metabolite)		0.2	2	

*The minimum reporting levels (MRLs), concentration range, and the number of samples containing a particular drug.

†Concentrations below the CDC's MRLs were not used in the evaluation.

‡2-Ethyl-1,5-dimethyl-3,3-diphenylpyrrololium perchlorate.

§Benzoylcegonine.

¶The MRL for total morphine was 0.5 µg/mL. No sample had less than 1.0 µg/mL.

*Morphine glucuronide.

*Not considered in evaluation.

laboratories ranged from four to 83 and spanned 26 states. The 13 laboratories selected served a total of 252 methadone centers. Although all laboratories in the mailed PT program were informed that selected laboratories would be surveyed in blind studies, the specific laboratories selected were not notified of their selection.

Sample Preparation

Each laboratory in the study received 100 urine samples. Each sample was selected from stock samples previously analyzed in the CDC's mailed PT program by 450 toxicology laboratories, including 40 reference laboratories. Each sample was prepared from human urine that had been screened by thin-layer chromatography and found to be free of the drugs being tested for in this study. The urine pool was prefiltered through a 0.22-µm membrane. Drugs or their metabolites in their salt form were added quantitatively to provide the concentrations shown in Table 1. Each pool was sterilized by filtration and dispensed aseptically into 60-mL vials. The samples were then stored at +4 °C until they were shipped to the treatment facilities. The samples were reanalyzed at the end of the study, and the initial concentrations were confirmed.

Minimum Reporting Levels

The CDC Mailed Proficiency Testing Program provides minimum reporting levels with each PT survey. All drug concentrations above the minimum reporting levels are to be reported positive; those below, negative. The CDC's minimum reporting levels (Table 1) were decided on by a peer review committee established by the National Institute on Drug Abuse, which consisted of consultants selected from the ranks of nationally known toxicologists. All laboratories included in this survey were able to detect drugs at the minimum reporting levels listed in the quarterly mailed surveys, as evidenced by satisfactory performance in the mailed surveys.

Study Design and Analysis

The CDC blind study was designed to classify (with $P \geq .90$) laboratories with a false-negative rate (FNR) and a false-positive rate (FPR) of 0.05 or less as acceptable and to classify (with $P \leq .05$) laboratories with FNR or FPR of 0.25 or greater as unacceptable. This objective was accomplished using "attribute acceptance sampling plans" to specify the number of positive (drug present) and negative (drug absent) samples to be tested by each laboratory for each drug and a rule for deciding whether a given laboratory has an acceptable FNR and FPR. For the

Table 2.—Sampling Plans and Associated Probabilities for the Centers for Disease Control Blind Study (Positive Challenges Only)

Drug or Drug Class	Sampling Plan*		P of Acceptable Classification†			
	n	r	FNR=0.05	FNR=0.10	FNR=0.20	FNR=0.25
Barbiturates	38	4	.96	.87	.10	.02
Amphetamines	48	4	.91	.87	.02	.003
Methadone	45	4	.93	.53	.04	.01
Cocaine	34	3	.91	.55	.07	.02
Codeine	42	4	.94	.59	.06	.01
Morphine	40	4	.95	.63	.06	.02

*n indicates the intended number of positive challenges; r, the maximum number of false-negatives allowable for acceptable classification.

†FNR indicates false-negative rate (ie, the relative frequency in routine testing with which a laboratory concludes that a positive [drug present] sample is negative [drug absent]).

The laboratory also reported 152 false-positive results occurring in 106 (69%) of the 160 samples.

With the background of previous studies that suggested a number of laboratories may have high error rates on routine patient samples, a blind study was undertaken with two primary objectives in mind: (1) to determine error rates that would reflect the laboratory error rates on routine patient samples and (2) to classify the laboratory's performance

as acceptable or unacceptable on the basis of predefined drug-screening error rates.

METHODS

Selection of Laboratories

The primary factor in selecting the laboratories included in this study was the number of methadone centers they served and not their previous performance on mailed PT or reports of poor performance from treatment programs. The number of methadone centers served by the selected

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Table 4.—Supporting Data for the Figure: Number of Positive Drug Challenges and Percentage of Correct Responses by Drug by Year*

Drug or Drug Class	1973, 24 Laboratories; No. (%)	1975, 9 Laboratories; No. (%)	1978, 1 Laboratory; No. (%)	1978, 4 Laboratories; No. (%)	1980, 2 Laboratories; No. (%)
Cocaine	Not included	71 (0)	68 (0)	90 (9)	85 (55)
Amphetamines	82 (43)	9 (33)	68 (82)	105 (40)	180 (44)
Morphine	111 (63)	45 (47)	66 (24)	120 (64)	164 (57)
Barbiturates	110 (72)	36 (72)	66 (36)	165 (78)	180 (58)
Methadone	100 (80)	54 (100)	66 (74)	105 (95)	134 (90)

*Percentages were obtained by dividing the total number of correct responses by the total number of positive drug challenges.

†Only seven of the nine laboratories in the study offered a service for testing for cocaine.

‡Data were available from only one laboratory for cocaine testing.

Table 5.—Summary of Results on Positive Samples by Drug or Drug Class From Blind Study*

Laboratory	Drug or Drug Class																	
	Barbiturates			Amphetamines			Methadone			Cocaine			Codeine			Morphine		
	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %
A	38	16	6-31	47	0	0-8	44	73	57-85	34	0	0-10	40	8	2-20	39	4	0-10
B	38	50	33-67	47	74	60-86	44	89	75-98	34	78	59-89	40	33	19-49	39	46	31-61
C	38	89	75-97	47	81	67-91	44	100	92-100	34	0	0-10	40	100	91-100	39	88	78-96
D	38	26	13-43	47	43	28-58	44	91	78-97	34	9	2-24	40	53	36-68	39	8	0-17
E	18	8	0-24	20	20	6-44	28	88	87-98	20	90	88-99	16	19	4-46	18	17	0-31
F	38	18	8-31	47	0	0-8	44	98	90-100	34	0	0-10	40	0	0-9	39	9	0-19
G	19	16	3-40	31	65	45-81	24	87	45-84	18	0	0-19	19	0	0-18	18	89	80-96
H	37	46	29-63	44	11	4-25	45	78	63-89	32	19	7-36	44	59	43-74	42	46	31-61
I	38	21	10-37	47	0	0-8	44	100	92-100	34	0	0-10	40	25	13-41	39	8	0-17
J	40	43	29-59	48	13	5-26	45	93	82-99	36	81	43-77	42	38	24-54	40	68	54-80
K	38	63	46-78	47	40	26-58	44	100	92-100	34	100	90-100	40	93	80-98	39	91	81-98
L	38	81	43-78	47	8	1-18	44	89	75-98	34	32	17-61	40	33	19-49	39	27	13-41
M	38	84	69-94	47	47	32-62	44	86	73-95	34	38	22-56	40	53	36-68	39	85	73-94

*The number of samples, the correct response rate (CRR), and the 95% confidence interval (CI), on the CRR for the 13 laboratories in the Control blind study. Confidence intervals were computed based on the binomial probability distribution.

Table 6.—Summary of Results on Positive Samples by Drug or Drug Class From Mailed Proficiency Testing Surveys 1979 II through 1981 I*

Laboratory	Drug or Drug Class																	
	Barbiturates			Amphetamines			Methadone			Cocaine			Codeine			Morphine		
	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %	No.	CRR, %	CI, %
A	35	100	98-100	32	97	88-100	30	100	88-100	29	100	88-100	28	68	48-84	29	100	88-100
B	19	100	82-100	19	95	77-100	16	100	82-100	17	100	81-100	19	74	45-91	18	100	88-100
C	39	100	91-100	36	97	88-100	34	100	90-100	31	100	89-100	32	100	89-100	32	100	88-100
D	39	100	91-100	36	100	90-100	34	100	90-100	32	84	67-95	32	84	67-95	32	88	71-98
E	39	95	83-98	36	100	90-100	34	97	87-100	32	97	86-100	32	97	86-100	32	100	88-100
F	39	97	89-100	36	92	78-98	34	100	90-100	31	97	86-100	...	...	...	...	...	...
G	34	100	90-100	32	100	89-100	29	100	88-100	25	100	86-100	27	100	87-100	27	100	88-100
H	39	95	83-98	36	83	67-94	34	100	90-100	31	100	89-100	32	100	89-100	32	97	86-100
I	39	97	89-100	36	100	90-100	31	100	89-100	31	100	89-100	32	100	89-100	32	100	88-100
J	34	97	87-100	31	94	79-99	29	100	88-100	25	96	82-100	26	92	82-100	26	99	88-100
K	39	92	79-98	36	97	88-100	34	100	90-100	31	97	86-100	32	97	86-100	32	97	86-100
L	39	100	91-100	36	94	81-99	34	100	90-100	31	100	89-100	32	84	67-95	32	100	88-100
M	39	97	89-100	36	94	81-99	34	100	90-100	31	87	70-96	32	100	89-100	32	100	88-100

*The number of samples, the correct response rate (CRR%), and 95% confidence interval (CI) on the CRR for each of the 13 laboratories in the Control 1981 blind study. Confidence intervals were computed based on the binomial probability distribution. Quarterly surveys are designated by the numbers I through IV.

†Service not offered for these drugs.

RESULTS

The number and percentage of laboratories whose performance was acceptable on a particular drug challenge to the acceptance sampling procedure described in Table 2 are shown in Table 3. A graphic comparison by drug or drug class of the overall correct response rates of the 13 laboratories in the 1981 CDC blind study and those obtained in the aforementioned previous studies is presented in the Figure, with supporting data summarized in Table 4.

A summary of results on positive samples by drug for each laboratory in the blind study is provided in Table 5. Similarly, a summary of results on negative samples used in mailed PT surveys, 1979 II through 1981 I are shown by drug for each laboratory in Table 6 (quarterly surveys are designated by a number I through IV), although not listed, there were at least 36 non-drug-containing (negative) samples for each of the drugs in laboratory in both blind and mailed PT surveys (except for laboratories B and F in the mailed surveys). A summary of correct response rates on both positive and negative samples is listed in Tables 7 and 8 for the blind study and for the aggregate of mailed surveys. All laboratories in the study had satisfactory results in the mailed PT survey before the blind test was performed.

For the drugs used in the evaluation, an increase in correct response rates on positive samples with increased drug concentration was suggested by a χ^2 goodness-of-fit test for the drugs—barbiturates ($P<.002$), methadone ($P<.008$), and codeine ($P<.001$)—test results were not significant for D-amphetamine and methamphetamine and did not have a range of concentrations amenable to analysis.

COMMENT

The results presented in this article indicate that the laboratories in the study missed a substantial number of drug challenges. While the results reflect serious shortcomings in the laboratories, the laboratories are only part of a complex picture involving the treatment centers, the state, and the federal governments. As early as 1972, [1] mentioned the lack of com-

Table 7.—Comparison of Laboratory Performance on Positive Samples From Blind Study and Mailed Surveys.*

Drug or Drug Class	Blind Study			Mailed PT		
	Average No. of Challenges per Laboratory	Average CRR, %	CRR Range, %	Average No. of Challenges per Laboratory	Average CRR, %	CRR Range, %
Barbiturates	35	41	8-89	36	98	92-100
Amphetamines	44	31	0-81	34	98	92-100
Methadone	41	88	67-100	32	100	97-100
Cocaine	32	36	0-100	28	98	87-100
Codeine†	37	45	0-100	30	91	68-100
Morphine†	36	38	0-95	30	89	69-100

*Correct response rates (CRRs) for 13 laboratories in the Centers for Disease Control test data: 1981 blind study and mailed proficiency testing (PT) surveys 1979 II through 1981 I (quarterly surveys are designated by the numbers I through IV). Laboratory A did not participate in mailed PT survey for 1981 I.

†Service for these drugs was not offered by laboratory F.

Table 8.—Comparison of Laboratory Performance on Negative Samples From Blind Study and Mailed Surveys.*

Drug or Drug Class	Blind Study			Mailed PT		
	Average No. of Challenges per Laboratory	Average CRR, %	CRR Range, %	Average No. of Challenges per Laboratory	Average CRR, %	CRR Range, %
Barbiturates	53	100	94-100	38	100	98-100
Amphetamines	49	97	83-100	41	99	97-100
Methadone	51	88	34-100	43	100	98-100
Cocaine	61	99	94-100	48	100	98-100
Codeine†	65	99	93-100	44	99	95-100
Morphine†	68	98	90-100	44	98	92-100

*Correct response rates (CRRs) for 13 laboratories in the Centers for Disease Control test data: 1981 blind study and mailed proficiency testing surveys 1979 II through 1981 I (quarterly surveys are designated by numbers I through IV). Laboratory A did not participate in mailed proficiency testing survey 1981 I.

†Service for these drugs was not offered by laboratory F.

mon standards or operational guides among treatment facilities and the absence of "regulations" for analytical practice in the laboratories. Our observations confirm that little has changed even a decade later; contracts between treatment facilities and laboratories lack uniformity in minimum reporting levels, minimum quality-control requirements, and reporting procedures for results. Some treatment facility directors were knowledgeable about the content of their laboratory contracts, but others appeared to have only superficial knowledge of the contract or had no written contract at all.

A possible factor in laboratory behavior resulting in the high level of false-negative errors reported herein may be laboratory perceptions of the kind of results that substantiate progress in the treatment setting. Specifically, negative results are an indicator of successful treatment and the compliance of the patient as well. In addition, they justify the public expenditures for such types of treat-

ment, decrease laboratory costs, and reduce the likelihood that legal means will need to be pursued.

The laboratory behavior leading to low correct response rates on blind samples and generally higher correct response rates on mailed samples does not appear to be the avoidance of testing ("sink testing") in the blind studies; rather, the data suggest less sensitive testing. For example, methadone has the highest correct response rate for both blind and mailed surveys, whereas amphetamines have the lowest for both surveys. This agreement in both testing modes suggests that the minimum reporting levels are higher (less sensitive) in routine testing than in mailed PT. Less sensitive testing may be the primary factor responsible for the high FNRs and comparatively lower FPRs. Less sensitive testing (which means that more drugs will be missed) may result from methodological design, personnel problems, or the reimbursement process. Because contracts are generally awarded

the lowest bidder, with no prior assessment of testing quality, inadequate reimbursement for services may induce the need for a higher throughput of patient samples. If realistic fee schedules were established for drug tests, perhaps more reliable procedures would be established and better-trained personnel would be hired, leading to higher-quality testing.

A large portion of treatment program budgets is spent on urine testing. In 1976, Gottheil et al¹ projected that 30 million urine samples would be tested. Based on this figure and the error rate range that we have observed in blind studies (37% to 69%), the losses resulting from erroneous results alone would range from \$37.2 million to \$75.6 million. For urine testing to continue as a major instrument in drug treatment facili-

ties, responsible clinicians and treatment directors should move to curb the waste of private and governmental expenditures. Our experience shows that remarkable improvements may be obtained through effective contracting with laboratories followed by monitoring of the quality of services received.

In recent years, the CDC has demonstrated that high-quality urine testing can be obtained from drug-screening laboratories when they are monitored by blind testing. The use of blind testing as a monitoring instrument for large screening laboratories produced substantial improvements in laboratory performance. Blind testing is highly regarded as a means of obtaining estimates of laboratory error rates.²⁻¹⁰

These studies demonstrate the effectiveness of blind testing as an

objective monitoring tool. In an assessment 91% of the laboratories had unacceptable FNRs for barbiturates; 100% for amphetamines; 90% for methadone; 91% for cocaine; and 92% for marijuana. With automation and computerization such evaluations and monitoring could be reduced to routine activity. Blind testing should be implemented by all those responsible for drug treatment to periodically assess the quality of service being provided.

This study was supported by an innovative agreement with the National Institute on Drug Abuse.

We gratefully acknowledge the assistance of the staff of the Clinical Chemistry and Toxicology Section who prepared the samples used in these studies and the staff of the treatment facilities who provided their time and resources to make this study possible.

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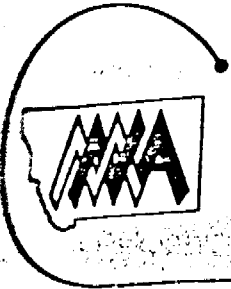
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SENATE JUDICIARY

EXHIBIT NO. 4

DATE 2-17-87

BILL NO. S.B. 331



Montana Nurses' Association

2001 ELEVENTH AVENUE

(406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59604

E 338

The Montana Nurses' Association supports SB 338 which, if passed, would regulate the testing of blood and urine of both employees and prospective employees.

Job performance should be the deciding factor in the retention of employees. If an employee cannot perform a given job due to being high, stoned, drunk, or otherwise impaired on the job, the employer has every right and responsibility to insist on appropriate discipline. But testing should only be used after there is evidence through unsatisfactory job performance that an employee may be impaired.

Blood and urine tests are not accurate unless there is evidence of impairment, because urine may test positive for a drug like marijuana days after smoking one joint. It is not the employer's business to hold in judgment an employees' actions during non work time, unless the employee's work performance suffers.

The Montana Nurses' Association supports SB 338 because it is both unfair and unreasonable to force workers who are not even suspected of using drugs, and whose job performance is satisfactory, to submit to degrading and intrusive urine tests. Innocent workers should not be treated as "guilty". MNA also strongly opposes subjecting an applicant to a pre-employment blood or urine test as a condition of employment, because the tests are not an accurate measurement of an individuals ability to perform a given job if hired.

This bill is good for employees and employers because wrongful discharge lawsuits and grievances are increasing in number for alleged unfair or inaccurate drug tests; without guidelines, employers are exposed to great liability, and employees are susceptible to a humiliating and degrading experience. With the passage of SB 338, an employer will reduce liability risks, have a good defense to actions related to drug testing, and will have objective criteria available for use in dealing with workers who have work performance problems linked to use of drugs.

The bottom line is that employees who do not use drugs, although having nothing to hide, have the right to be left alone!

I urge you give this bill a DO PASS recommendation.

Respectfully submitted,
Eileen C. Robbins, R.N.
February 17, 1987

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 2-17-87
BILL NO. S.B. 338

Legislative Fact Sheet

SENATE BILL 338

"FAIRNESS IN DRUG TESTING"

SB. 338 amends existing law on the use of lie detector testing (polygraphs) to include guidelines for the use of blood or urine tests as a condition of employment (Section 39-2-304 M.C.A.).

The new section states that in order to require a blood or urine test, an employer must have reason to believe, and demonstrable evidence, that the employee was impaired on the job due to illegal drug use, and that his/her impairment presented a safety risk.

If this threshold is satisfied, and the employee tests positive for drugs, he/she must be allowed a "confirmatory" test and the opportunity to explain the results.

Drug testing guidelines are needed in Montana, by employees and employers alike, for the following reasons:

A. VIOLATION OF CONSTITUTIONAL STANDARDS

-blood and urine tests are considered "bodily searches" under the Fourth Amendment's prohibition against unreasonable searches and seizures.

-tests should be limited to workers who are reasonably suspected of illegal drug use on the job.

-indiscriminate testing is un-American: it is unfair to treat the innocent and guilty alike.

-Although the U.S. Constitution does not apply to private employers, the Montana Constitution guarantees a much broader protection of personal privacy and should protect our citizens against the abuses of unrestricted drug testing.

-numerous drug testing programs of public employees (firefighters, customs agents, school teachers, prison guards) have been invalidated as unconstitutional.

B. UNRELIABILITY

-the most commonly used urine test (EMIT) results in a "false positive" as much as 30% of the time.

-urine tests commonly confuse cold medications, headache remedies and even some foods for illegal drugs.

-dirty specimen bottles, poor lab techniques, and mix-up the "chain of custody" can all result in faulty tests.

-follow-up "confirmatory" tests are rarely done, despite the fact that the employee's job is on the line.

C. UNFAIR TO EMPLOYEES

-giving a urine sample can be a humiliating and degrading experience -- the employee must urinate while being closely observed by another person -- and yet failure to take the urine test results in dismissal.

-long-time employees with good work records are being fired on the basis of a single and often inaccurate test.

-dismissals due to a "false positive" result can plague an employee for the rest of his/her working life.

-even if the result is negative, suspicion itself can cause the employee irreparable harm.

D. EMPLOYERS NEED GUIDELINES

-wrongful discharge and bad faith lawsuits are assaulting employers in increasing numbers; a growing number of these suits are filed by employees fired for what they contend were unfair or inaccurate drug tests.

-without guidelines, the employer is exposed to great liability.

-the proposed amendment will provide guidelines and reduce this risk: an employer who has followed the proposed procedures will have a good defense to these actions.

E. ISSUE OF PRIVACY

-urine tests don't measure current impairment -- job performance should be the bottom line.

-urinalysis cannot determine when a drug was ingested -- what happens on Saturday night is not the employer's business.

-people who don't use drugs may have "nothing to hide," but under our system of government they have the right to be left alone.

Proposed Amendments
to SB 338

submitted by:

John S. Fitzpatrick
Manager of Administration
Montana Tunnels Mining Co.
Jefferson City, MT 59638

- 1 Page 1 Strike lines 17-25 in their entirety
- 2 Page 2. Strike lines 1-5 in their entirety
- 3 Page 2. Insert in lieu of the material above the following:

New Section. Employer Rights: All employers have the right to inquire into current ^{usage of mood altering drugs by} ~~long-term~~ current or prospective employees including the administration of drug tests and to discipline or refuse to hire persons

~~any~~ whose pattern of drug usage deviates from standards established by the employer

New Section. Drug Testing Procedure. Administering drug tests shall adhere to the following procedural steps:

1. Specimens of body fluids shall be provided by the person as directed by the employer in a quantity sufficient to allow at least six tests to determine the presence of mood altering drugs.
2. ^{collected} Specimens shall be divided into two equal parts, ~~then~~ sealed, in tamper proof containers, and labeled by the individual providing the specimen. One half of the specimen shall be forwarded to a licensed diagnostic laboratory for testing. The second half shall be held in safe keeping by the employer or his designated representative shall be available to confirm test results obtained from the ~~same~~ tests.

3. A test for the presence of mood altering drugs shall not be considered positive until confirmed by two or more tests ^{have been} conducted using different testing procedures.
4. The results of any drug test conducted by an employer shall be available to the person tested. The person may challenge the validity of the test results, in which case, the original half of the specimen held in safekeeping shall be retested in the presence of witnesses at a licensed diagnostic laboratory. The results of the confirmatory test shall be considered conclusive.
5. Any action taken by a person to substitute or adulterate specimens of body fluids collected under this section is prohibited and violation thereof is sufficient cause for the termination of all employment rights.

BEST COPY AVAILABLE

1. The results of drug tests shall not be released by any person or as required by law. This provision shall be in the event of any public disclosure of the test results by the person.

BEST COPY AVAILABLE

2. A copy of the procedure shall be provided to each employee ~~and~~ ^{in writing} prior to ~~any~~ ^{the} ~~test~~ ^{test} of any drug test.

Judiciary Committee
Minutes of the meeting
February 20, 1987 10:00 a.m.
page 4

come out of the Water Development Fund, which is in the Coal Tax money.

Senator Galt asked why the fund that this money would be taken from is not specified in the bill. Mr. Schofield said that is correct; it should be specified. Mr. Schofield said he would work on that in the back of the room.

Senator Yellowtail closed.

CONSIDERATION OF SB 380: Senator Pinsoneault of St. Ignatius introduced SB 380, which clarifies the law relating to products liability actions, defining two defenses available in a products liability case. He explained this was a Judiciary Committee bill request.

PROPOSERS: Keith Keller, Montana Association of Defense Counsel, said the most important change is to permit the assumption of defenses associated with users of the product. He said the only defense based on the product user conduct is subjective assumption of the risk. He said this bill will substitute for that subjective standard. He said misuse of the product is used as a defense in this bill and he said the idea of contributory fault with product liability has become law in other states.

Jim Robischon, Montana Liability Coalition, supported the bill.

OPPOSERS: Karl Englund, Montana Trial Lawyers Association, commented that he is concerned about the assumption of the risk. He stated that in the assumption of the risk, if the defect was an obvious danger, then one could say the consumer should obviously be aware of the obvious danger. He felt a misuse of a product is subpart of the assumption of the risk.

John Hoyt, Great Falls, thought on page 2, line 17, insert "(a) the user of the product discovered the defect or the defect was obvious and the user should have been aware of the danger". He said it becomes an objective point of view this way.

DISCUSSION ON SB 380: Senator Pinsoneault asked Mr. Keller if he agreed with Karl Englund's and John Hoyt's proposal. Mr. Keller said it changed the bill drastically, so he did not agree with their proposal.

The committee adjourned for executive action.

ACTION ON SB 338: Valencia presented amendments to the bill from the 7:00 a.m. meeting, which were revised (see Exhibit 6). Senator Yellowtail moved to strike all amendments that were passed in this bill and return with the original bill. The motion CARRIED. Senator Bishop moved to strike the revised amendments. The motion CARRIED. Senator Yellowtail moved the bill DO PASS AS AMENDED. The motion CARRIED.

SB338 IS AMENDED AS FOLLOWS:

10:00a

10:00
am
EXE.
SECTION

1. Page 1, line 18.
Following: "test"
Insert: ", except for employment in hazardous work environments or in jobs that involve security, public safety, or fiduciary responsibility"
2. Page 1, lines 20 and 21.
Following: "unless" on line 20
Strike: the remainder of line 20 through "(i)" on line 21
3. Page 1, line 21.
Following: "employer"
Strike: "has demonstrable evidence"
Insert: "believes"
4. Page 1, line 23.
Following: "use"
Strike: ";"
Insert: "."
5. Page 1, lines 24 and 25.
Strike: subsection (ii) in its entirety
Insert: "(d) Prior to the administration of a drug test,
the person, firm, corporation, or other business entity or its representative shall adopt a written drug testing procedure and make it available to all persons subject to drug testing. A drug testing procedure must provide for the:
(i) collection of a blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;
(ii) collection of a quantity of specimen sufficient to ensure the administration of several tests;
(iii) collection, storage, and transportation of the specimen in tamper proof containers;
(iv) adoption of chain-of-custody documentation procedures identifying how the specimen was handled and tested;
(v) verification of drug test results by two or more different testing procedures before judging a drug test positive; and
(vi) prohibition of the release of drug test results, except as authorized by the person tested or as required by a court of law.

6. Page 2, line 1.

Following: page 1

Strike: "(iii) the employer gives the employee"

Insert: "(e) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug test results to the person tested and provide him"

7. Page 2, line 2.

Following: "the"

Strike: "employer's"

Following: "expense"

Insert: "of the person requiring the test"

8. Page 2, line 3.

Following: "laboratory"

Strike: ";

Insert: "selected by the person tested"

9. Page 2, line 4.

Following: line 3

Strike: "(iv)"

Following: "the"

Strike: "employee"

Insert: "person tested"

10. Page 2, line 6.

Following: "against"

Strike: "an"

Insert: "a"

11. Page 2, line 7.

Following: line 6

Strike: "employee"

Insert: "person"

Following: "under"

Strike: "subsection"

Insert: "subsections (1)(b),"

Following: "(1)(c)"

Insert: ", and (1)(e)"

Following: "if the"

Strike: "employee"

Insert: "person tested"

C:\LANE\WP\AMDSB338.

SENATE J. 2-24
EXHIBIT NO. _____
DATE _____
BILL NO. _____

SENATE JUDICIARY

EXHIBIT NO. 6

DATE 2-20-87

BILL NO. S.B. 338

10 am

LC 1498/01

(c) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug test results to the person tested and provide him

LC 1498/01

1 Senate BILL NO. 338
2 INTRODUCED BY Boyle, Rep. David Vincent
3 Sen. Bill

4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE TESTING
5 OF BLOOD AND URINE OF EMPLOYEES AND PROSPECTIVE EMPLOYEES;
6 AND AMENDING SECTION 39-2-304, MCA."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 Section 1. Section 39-2-304, MCA, is amended to read:
10 "39-2-304. Lie detector tests prohibited -- exception
11 regulation of blood and urine testing. (1) No person, firm,
12 corporation, or other business entity or representative
13 thereof shall require;

14 (a) as a condition for employment or continuation of
15 employment, any person to take a polygraph test or any form
16 of a mechanical lie detector test;

17 (b) as a condition for employment, any person to
18 submit to a blood or urine test; except for employment in hazardous work
19 and environments or in jobs that involve security,
20 public safety, or fiduciary responsibility

21 (c) as a condition for continuation of employment, any
22 employee to submit to a blood or urine test unless
23 the employer believes
24 that the employee's impairment presents a clear and
25 imminent danger to the community or the safety of others
26 or the employee's faculties are impaired on the job as a result of
27 illegal drug use.

1 ~~(iii) the employer gives the employee the opportunity,~~
2 ~~of the person requiring the test~~
3 ~~at the employer's expense, to obtain a confirmatory test of~~
4 ~~the blood or urine by an independent laboratory, and~~
5 ~~the person tested~~
6 ~~that the employee is given the opportunity to rebut or~~
7 ~~explain the results of either test or both tests.~~

8 (2) Adverse action may not be taken against ~~an~~
9 ~~person~~ person ~~subsections (1)(b), and (1)(c)~~
10 ~~employee tested under subsection (1)(c) if the employee~~
11 ~~person tested~~ person tested
12 ~~presents a reasonable explanation or medical opinion~~
13 ~~indicating that the results of the test were not caused by~~
14 ~~illegal drug use.~~

15 (3) A person who violates this section is guilty of a
16 misdemeanor.

17 (2)--This--section--shall--not--apply--to--public--law
18 enforcement--agencies."

-End-

Insert amendment

STANDING COMMITTEE REPORT

February 20

87

19

SENT

committee on **SENATE JUDICIARY**

under consideration **SENATE BILL** No. **338**

first reading copy (white)
color

Regulate tests of blood and urine of employees and prospective employees.

fully report as follows: That **SENATE BILL** No. **338**

BE AMENDED AS FOLLOWS:

1. Page 1, line 18.

Following: "test"

Insert: ", except for employment in hazardous work environments or in jobs that involve security, public safety, or fiduciary responsibility"

2. Page 1; lines 20 and 21.

Following: "unless" on line 20

Strike: the remainder of line 20 through "(1)" on line 21

3. Page 1, line 21.

Following: "employer"

Strike: "has demonstrable evidence"

Insert: "believes"

4. Page 1, line 23.

Following: "use"

Strike: "i"

Insert: "."

CONTINUED

SENATOR MAZUREK

Chairman.

5. Page 1, lines 24 and 25.

Strike: subsection (ii) in its entirety

Insert: "(2) Prior to the administration of a drug test, the person, firm, corporation, or other business entity or its representative shall adopt a written drug testing procedure and make it available to all persons subject to drug testing. A drug testing procedure must provide for the:

(a) collection of a blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;

(b) collection of a quantity of specimen sufficient to ensure the administration of several tests;

(c) collection, storage, and transportation of the specimen in tamperproof containers;

(d) adoption of chain-of-custody documentation procedures indentifying how the specimen was handled and tested;

(e) verification of drug test results by two or more different testing procedures before judging a drug test positive; and

(f) prohibition of the release of drug test results, except as authorized by the person tested or as required by a court of law."

6. Page 2, line 1.

Following: page 1

Strike: "(iii) the employer gives the employee"

Insert: "(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug test results to the person tested and provide him"

Renumber: subsequent subsections

7. Page 2, line 2.

Following: "the"

Strike: "employer's"

Following: "expense"

Insert: "of the person requiring the test

8. Page 2, line 3.

Following: "laboratory"

Strike: "; and"

Insert: "selected by the person tested."

9. Page 2, line 4.

Following: line 3

Strike: "(iv) the employee is"

Insert: "The person tested must be"

10. Page 2, line 6.

Following: "against"

Strike: "an"

Insert: "a"

CONTINUED

11. Page 2, line 7.

Following: line 6

Strike: "employee"

Insert: "person"

Following: "under"

Strike: "subsection"

Insert: "subsections (1)(b),"

Following: "(1)(c)"

Insert: ", and (1)(e)"

Following: "if the"

Strike: "employee"

Insert: "person tested"

AND AS AMENDED
DO PASS

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVE

March 18, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 18, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Grady and Daily who were excused.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 261:

Rep. Cobb moved that SB 261 BE CONCURRED IN. Rep. Hannah moved that SB 261 be amended. He moved that the title be amended, striking "a person 21 years of age or older" and inserting "an adult", and amending page 2, line 20 with the same language. Rep. Darko stated this amendment will not weakened the bill. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached).. Rep. Giacometto proposed to delete 1000 feet. Rep. Darko pointed out that there is too much drug dealing going on near the school and she felt this should be left in. Rep. Brown stated Montana does have a problem with drugs and the more the state grows the larger the problem will get. He said, this kind of statute will have a big impact and this bill should be left alone. Rep. Mercer moved to amend on page 2, line 22-24, striking the language ", which" on line 22 through "school," on line 24. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached).

Rep. Miles pointed out she disagrees with the mandatory prison sentence of a minimum 4-20 years and there will be a fiscal impact on the prison system. She prefers to see a traditional type of penalty clause. Rep. Eudaily requested that section 2 be clarified. Rep. Mercer asked that Mr. MacMaster make a suggestion in regards to this. He stated that on Page 1, lines 20-23, it says that the person shall be imprisoned and fined and it does not refer to the language "or both". On page 2, lines 3-5, it says, shall be imprisoned and fined, and the same thing appears on lines 7-9. The words "or both" are added into the section in the amendment. This wording does not add anything to the bill. He suggested the words be deleted on page 3, lines 9-10, page 3, lines 17-22. Rep. Eudaily moved that this deletion should take place. Question was called and a voice vote was

delinquency petition on that child. He further pointed out that he agreed with the proposed amendments.

SENATE BILL NO. 223: Senator Eck, District No. 40, stated this bill extends confidentiality to mediators. Currently in the State of Montana there is a lot of concern for developing alternative methods for dispute resolution. The process of mediation has not come along way in Montana. She stated that a person acting as a mediator in a family law mediation cannot, without the consent of the parties to the mediation be examined in a civil action as to any communication made by a party to him during the course of the mediation.

PROPOSERS: REP. HANNAH went on record in support of this legislation.

There were no further proponents, no opponents and no questions.

Senator Eck closed the hearing on SB 223.

SENATE BILL NO. 338: Senator Boylan, District No. 39, sponsor, stated this is an act regulating the testing of blood and urine of employees and prospective employees. This bill sets the guidelines.

PROPOSERS: STEVEN UNGAR, A.C.L.U., submitted proposed amendments. (Exhibit A). He stated that support for this bill will benefit both employers and employees. He pointed out SB 338 curbs abuse on the part of the employers and it limits the abuse of drugs and the costs in terms of productivity and liability. It attempts to achieve a balance and for that reason it can appropriately be called a fairness in drug testing bill.

JIM MURRAY, Montana AFL-CIO, Executive Secretary, stated the Federation strongly believes the workplace should remain drug and alcohol free. Drug abuse and alcoholism can severely impair a worker's physical and mental performance while on the job. He pointed out that they strongly support the proposed amendments. He believes that SB 338 is a positive step towards creating a safe and productive workplace, while still respecting the rights of employees. He submitted written testimony. (Exhibit B).

EILEEN ROBBINS, Montana Nurses' Association, stated that MNA supports both amendments proposed and believes they make the bill fair to everyone. She pointed out that the bottom line is that employees who do not use drugs, although having nothing to hide, have the right to be left alone. She urged

a do pass recommendation and submitted written testimony. (Exhibit C).

JAMES T. MULAR, appearing on behalf of the joint council of Railway Brotherhoods in the State of Montana, stated that SB 338 addresses random testing for drugs and alcoholic abuses. He stated they support the amendments. He urged support.

ALAN NICHOLSON, Self-employed businessman, Helena, believes this legislation provides appropriate guidelines for drug testing for cause and it prevents arbitrary violations of personal privacy, it also curbs unnecessary abuse of the litigation process which is good for both employees and employers. He urged support but disagreed with the Senate amendment of Section C(a) in regard to the word "believes".

WAYNE C. TURNER, businessman, Big Sandy, favors the bill as amended but does not feel that the amendment on reasonable cause goes far enough. He pointed out that he believes in the presumption of innocence.

JOHN S. FITZPATRICK, Pegasus Gold Corporation, supports SB 338 as it existed in the third reading copy. He stated this bill reflects a reasonable approach to drug testing. He opposed the proposed first amendment because it restricts who can be tested but found no fault with the second amendment.

F. H. BUCK BOLES, Montana Chamber of Commerce, President, stated he disagrees with Mr. Ungar's approach for narrowing down Section 1(b). He believes it should be left up to the employer if he wants to test as condition of employment. He supported SB 338 with the above change.

BILL LEARY, Montana Hospital Association, supports this legislation as it passed the Senate but opposes the proposed amendment of Section 1(b) because the amendment does not cover public safety as envisioned to protect the patients in the hospitals from the illegal use of drugs. In that respect, he preferred the language currently in the bill.

WES HENTHORNE, B BAR Ranch, stated that SB 338 provides protection and he supported this legislation.

SUSAN GREGORY, Billings, pointed out that there is no such thing as 100% positive testing.

DAN C. EDWARDS, International Representative for the Oil, Chemical and Atomic Workers International Union, Billings, also speaking on behalf of the Montana State AFL-CIO, stated prior to his transfer to Billings, he was the Director of Health and Safety for the International Union, located in

Denver, Colorado. In that capacity, one of his areas of responsibility was to assist in the legal department in the development of a just and reasonable position regarding testing of employees for alcohol and drugs by employers. He stated there is a wave of hysteria sweeping the U.S. today surrounding this matter--and small wonder with the President and First lady being the head cheerleaders. OCAW does not support or condone in any way whatsoever, the use of drugs or alcohol on-the-job; however, unless it can be demonstrated by clear, objective evidence that a worker is impaired on the job, or that worker's job performance is affected, we believe that workers have the same rights as any other American against unwarranted employer intrusion into an employee's private life away from the workplace. It is not the role of the employer to be society's policeman. He urged that this modest piece of legislation to be passed. He submitted written testimony. (Exhibit D).

LYNN B. HETLAND, PhD Toxicologist, Billings, stated even though the ability to detect drugs and measure their concentrations in biological specimens has evolved into a highly sophisticated and reliable science and technology, there are intrinsic limitations with drug screening tests and errors are inevitable. Drug screening errors lead to two types of misinformation: false-positive and false-negative test results. He encouraged support for this bill and the modifications which are proposed. He submitted written testimony. (Exhibit E).

JEFF WRENS, Attorney, Billings, Legal Director of the American Civil Liberties Union of Montana, submitted written testimony as (Exhibit F) stating that SB 338 amends existing law on the use of lie detector testing (polygraphs) to include guidelines for the use of blood or urine tests as a condition of employment. It is outrageous to have everyone's privacy violated to catch the 1 or 2 percent who occasionally break the law, he said.

R. R. ROMNEY, Branch Manager, South-West Marketing Division, IBM, Helena, sent in written testimony. (Exhibit G). He stated an essential element in the overall company efforts to ensure a drug free workplace are the restrictions regarding pre-employment screening and should not be limited to narrowly defined job categories. He hoped that this section could be considered for amendment.

OPPONENTS: CHAS DEARDEN, Burlington Northern Railroad, stated he opposed the bill as written but supports the bill itself. His problem is that the treating of railroad employees for alcohol and drug abuse is already regulated by the Federal Government. He submitted 49 CFR Ch.11 (10-1-86 Edition) Section 219.1 from the Federal Railroad

Administration, DOT (Exhibit H). He pointed out that one of the underlined reasons for Federal regulations is to ensure uniformity within the states with regards to specific areas of the law. An amendment was proposed by Mr. Dearden on line 19 of the first page with regard to the exceptions listed. He requested that the word "Railroads" be inserted after the word "in". He further pointed out that this is not strictly a railroad argument, this argument is for any industry that is regulated by the Federal government, which would include airlines and airline pilots.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 338: Rep. Giacometto asked Mr. Ungar about his comments on the committee taking out the language "illegal" on page 2, so that alcohol and other types of drugs could be covered. Mr. Ungar commented the bill is addressed to illegal drug use and to expand on this could be seen as a conflict between the basic structure of our society that makes a distinction between legal and illegal use of substances.

Senator Boylan closed the hearing on SB 338.

SENATE BILL NO. 121: Senator B. Brown, District No. 2, stated that this is an act establishing criteria determining when firearms or ammunition may not be considered defective in design in products liability actions and providing exceptions. In a products liability action, no firearm or ammunition may be considered defective in design on the basis that the benefits of the product do not outweigh the risk of injury posed by its potential to cause serious injury, damage, or death when discharged. The provisions of this section do not affect a products liability cause of action based upon the improper selection of design alternatives.

PROPOSERS: BRIAN JUDY, NRA legislative Liaison for the Northwest Region and a life member of the National Rifle Association, stated that product liability is an issue of growing concern in a number of industries and recreational activities, but no area is threatened more than the ownership and use of firearms by law-abiding citizens. SB 121 would assure that neither firearms nor ammunition could be deemed defective in design on the basis that the benefits of the product do not outweigh the potential danger. It will in no way, however, affect product liability actions based upon improper design, manufacturing defects, nor negligence on the part of the provider. He submitted written testimony (Exhibit A) and urged support for this legislation.

ROBERT VANDERVERE, stated this is an excellent bill.

SENATE BILL NO. 338

INTRODUCED BY BOYLAN, RAPP-SVRCEK, VINCENT, STRIZICH,
PINSONEAULT, BRADLEY

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE TESTING
OF BLOOD AND URINE OF EMPLOYEES AND PROSPECTIVE EMPLOYEES;
AND AMENDING SECTION 39-2-304, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-2-304, MCA, is amended to read:

"39-2-304. Lie detector tests prohibited -- exception
regulation of blood and urine testing. (1) No person, firm,
corporation, or other business entity or representative
thereof shall require:

(a) as a condition for employment or continuation of
employment, any person to take a polygraph test or any form
of a mechanical lie detector test;

(b) as a condition for employment, any person to
submit to a blood or urine test, EXCEPT FOR EMPLOYMENT IN
HAZARDOUS WORK ENVIRONMENTS OR IN JOBS THAT INVOLVE
SECURITY, PUBLIC SAFETY, OR FIDUCIARY RESPONSIBILITY, and

(c) as a condition for continuation of employment, any
employee to submit to a blood or urine test unless:

(i) the employer has demonstrable evidence BELIEVE
that the employee's faculties are impaired on the job as a

AS AN OPERATOR OF MACHINERY OR
EQUIPMENT (INCLUDING THAT USED IN
TRANSPORTATION), WHEN THE OPERATOR'S
IMPAIRMENT WOULD POSE A THREAT
TO THE PUBLIC SAFETY.

result of illegal drug user.

(ii) the employee's impairment presents a clear and
present danger to his own safety or the safety of others;

(2) PRIOR TO THE ADMINISTRATION OF A DRUG TEST, THE
PERSON, FIRM, CORPORATION, OR OTHER BUSINESS ENTITY OR ITS
REPRESENTATIVE SHALL ADOPT A WRITTEN DRUG TESTING PROCEDURE
AND MAKE IT AVAILABLE TO ALL PERSONS SUBJECT TO DRUG
TESTING. A DRUG TESTING PROCEDURE MUST PROVIDE FOR THE:

(A) COLLECTION OF A BLOOD OR URINE SPECIMEN IN A
MANNER THAT MINIMIZES INVASION OF PERSONAL PRIVACY WHILE
ENSURING THE INTEGRITY OF THE COLLECTION PROCESS;

(B) COLLECTION OF A QUANTITY OF SPECIMEN SUFFICIENT TO
ENSURE THE ADMINISTRATION OF SEVERAL TESTS;

(C) COLLECTION, STORAGE, AND TRANSPORTATION OF THE
SPECIMEN IN TAMPER-PROOF CONTAINERS;

(D) ADOPTION OF CHAIN-OF-CUSTODY DOCUMENTATION
PROCEDURES IDENTIFYING HOW THE SPECIMEN WAS HANDLED AND
TESTED;

(E) VERIFICATION OF DRUG TEST RESULTS BY TWO OR MORE
DIFFERENT TESTING PROCEDURES BEFORE JUDGING A DRUG TEST
POSITIVE; AND

(F) PROHIBITION OF THE RELEASE OF DRUG TEST RESULTS,
EXCEPT AS AUTHORIZED BY THE PERSON TESTED OR AS REQUIRED BY
A COURT OF LAW.

(iii) the employer gives the employee (3) THE PERSON,



Box 1176, Helena, Montana

JAMES W. MURRY
EXECUTIVE SECRETARY

ZIP CODE 59624
406 442-1708

TESTIMONY OF JIM MURRY ON SENATE BILL 338 BEFORE THE HOUSE JUDICIARY COMMITTEE,
MAY 18, 1987

Good morning. For the record, my name is Jim Murry and I am the executive secretary of the Montana State AFL-CIO. We are here today to testify in support of Senate Bill 338.

The labor federation strongly believes that the workplace should remain drug and alcohol free. Drug abuse and alcoholism can severely impair a worker's physical and mental performance while on the job. And the serious consequences caused by drug and alcohol abuse are harmful not only to the person involved, but also to family, friends and co-workers.

However, it is important to understand that alcohol and drug abuse are illnesses and not crimes. Individuals suffering from these addictions deserve treatment, not punishment.

Unfortunately, it has become all too common for employers in both the public and private sectors, to use arbitrary random drug testing as a method to screen all job applicants or as a condition of employment.

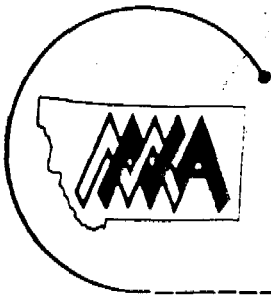
We strongly oppose the use of random drug tests because they present an invasion of individual privacy and violate the constitutional guarantee against unreasonable search and seizure. In working towards a drug-free work environment we must also make sure we do not infringe on employees' constitutional rights.

We support the amendment to this bill which eliminates random drug testing of existing employees. Also, we agree with the amendment which requires employers to follow written guidelines that must be made available to employees.

Employers need to be aware that drug testing procedures are not fail-safe. False positives can occur at least 25 percent of the time. They can be triggered by such common substances as cold medications, cough syrups, caffeine and asthma medications. Because of this high degree of inaccuracy, we believe that employees might be falsely labeled as substance abusers or discharged without cause.

The Montana State AFL-CIO believes that both workers and employers should continue working together to develop constructive solutions to drug and alcohol abuse. We do not believe that employers, who are increasingly caught in the hysteria surrounding drug use, should use improper or punitive testing procedures.

We believe that Senate Bill 338 is a positive step towards creating a safe, and productive workplace, while still respecting the rights of employees. For these reasons, we ask you to give Senate Bill 338 a "do pass" recommendation.



Montana Nurses' Association

(406) 442-6710

P.O. BOX 5718 • HELENA, MONTANA 59604

SB 338

Mr. Chair, members of the committee, my name is Eileen Robbins, speaking on behalf of the Montana Nurses' Association, a labor organization with over 1400 registered nurse members across the state of Montana.

The Montana Nurses' Association supports SB 338 which, if passed, would regulate the testing of blood and urine of both employees and prospective employees.

Job performance should be the deciding factor in the retention of employees. If an employee cannot perform a given job due to being high, stoned, drunk, or otherwise impaired on the job, the employer has every right and responsibility to insist on appropriate discipline. But testing should only be used after there is evidence through unsatisfactory job performance that an employee may be impaired.

Blood and urine tests are not accurate unless there is evidence of impairment, because urine may test positive for a drug like marijuana days after smoking one joint. It is not the employer's business to hold in judgment an employees' actions during non work time, unless the employee's work performance suffers.

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The Montana Nurses' Association supports SB 338 because it is both unfair and unreasonable to force workers who are not even suspected of using drugs, and whose job performance is satisfactory, to submit to degrading and intrusive urine tests. Innocent workers should not be treated as "guilty".

MNA also strongly opposes subjecting an applicant to a pre-employment blood or urine test as a condition of employment, because the tests are not an accurate measurement of an individual's ability to perform a given job if hired.

MNA supports both amendments which are being offered here today, and believes that they make the bill FAIR TO EVERYONE

This bill is good for employees and employers because wrongful discharge lawsuits and grievances are increasing in number for alleged unfair or inaccurate drug tests; without guidelines, employers are exposed to great liability, and employees are susceptible to a humiliating and degrading experience. With the passage of SB 338, an employer will reduce liability risks, have a good defense to actions related to drug testing, and will have objective criteria available for use in dealing with workers who have work performance problems linked to use of drugs.

The bottom line is that employees who do not use drugs, although having nothing to hide, have the right to be left alone!

I urge you give this bill a DO PASS recommendation with the inclusion of the amendments offered today.

Respectfully submitted,
Eileen C. Robbins, R.N.
March 18, 1987

SB-338
(Proposing to Amend 39-2-304)

STATEMENT OF DAN C. EDWARDS
International Representative

Oil, Chemical and Atomic Workers International Union
P.O. Box 21635
Billings, MT 59104
669-3253

Before the HOUSE JUDICIARY COMMITTEE, 9:00 a.m., March 18, 1987, Helena, MT.

Good Morning:

My name is Dan Edwards. I am an International Representative with the Oil, Chemical and Atomic Workers International Union. I live in Billings, but my area of assignment includes the entire State of Montana. I am also speaking on behalf of the Montana State AFL-CIO on this Bill.

The Oil, Chemical and Atomic Workers International Union (OCAW) represents approximately 110,000 workers in the oil, chemical and related industries. As are all of you, OCAW is vitally concerned about the abuse of alcohol and drugs in our society. However, we are also vitally concerned that any policy or program that deals with the testing of workers for alcohol or drugs be based upon a sound "probable cause" basis.

Perhaps before I go any further, I should briefly tell of my background in this field. Prior to my transfer to Billings in the latter part of 1986, I was the Director of Health and Safety for the International Union, located in Denver, Colorado. In that capacity, one of my areas of responsibility was to assist our Legal Department in the development of a just and reasonable position regarding testing of employees for alcohol and drugs by employers. For a period of nearly 18 months I spent about 80% of my time doing research in this area and assisting OCAW Local Unions across the Country in fighting unreasonable, unfair testing programs. This experience makes me qualified to address this most important Bill.

There is a wave of hysteria sweeping the United States today surrounding this--and small wonder with the President and First Lady being the Head Cheerleaders.

But so much about the evils of drugs--and they are evil--that very little is said about the many problems that are found regarding the adoption of workplace testing programs. Problems that deal with the accuracy of the testing, of the accurate reporting of the results of drug testing, of persons exposed to marijuana, but not smoking it themselves, testing positive, of the absolute necessity of reasonable "sensitivity" or "cut off" levels for determining that an employee tested positive for drugs, and of the stigma that can attach itself to a worker when that worker is required to "pee in the bottle".

First, I want to make it very clear that OCAW does not support or condone in any way whatsoever, the use of drugs or alcohol on-the-job, or coming to work under the influence of any substance. However, unless it can be demonstrated by clear, objective evidence that a worker is impaired on the job, or that a worker's job performance is effected, we believe that workers have the same rights as any other American against unwarranted employer intrusion into an employee's private life away from the workplace. IT IS NOT THE ROLE OF THE EMPLOYER TO BE SOCIETY'S POLICEMAN. That's what this Bill SB-338 is all about.

The abuse of alcohol and drugs is not new. In fact, figures I have seen seem to indicate that in some areas the use (and abuse) of alcohol and drugs is actually declining as people become better informed about the hazards of their use. What is new, is the technology to cheaply detect the metabolites of certain drugs in a person's body fluids. In my sincere opinion, one of the major driving forces behind the rash of drug testing programs are the many company--most of them brand new companies that didn't even exist a few years ago--which see BIG BUCKS to be made by selling industry drug testing programs. Drug testing kits for the initial drug screen can be found for under \$5.00 each. Now any reputable drug testing company is going to require that a second test, using a different methodology be done to confirm the results since the tests used for the initial screening can have a high rate of

false-positives. But, there are no laws that I'm aware of in any State in the Nation to require confirmation testing to be done. I don't think it takes a real genius to see that many companies, especially smaller companies, are not going to bother to have the confirmation testing done--especially since the confirmation testing is much more expensive (\$75-100.00). They are simply going to fire the worker if they can.

I used the word "false-positive" just a minute ago. This term means that a test comes back as "positive" when in fact the drug or substance being tested for is not present in the sample. There are many reasons this can happen. Rather than take your valuable time here today I have attached a copy of a study done by the Center for Disease Control (CDC) which shows false-positive error rates as high as 66% in drugs commonly tested for. This scientific study was published in the Journal of the American Medical Association in April of 1985. If you take the time to read this study you will see why caution is necessary.

A second thing about drug testing that most people aren't aware of is that the drug tests we have been talking about do not detect the psychoactive ingredients in a person's urine--they detect the metabolites of the drugs. In some cases, most notably marijuana, the drug metabolites can remain stored in a person's body fat for many weeks. The metabolites do not cause impaired performance. In fact, all manufacturers of drug testing kits are very careful to point out in their literature that a positive test does not prove impairment, or under the influence.

It is for the above reasons, that even when drug testing is done in "for cause" situations reasonable "sensitivity" or "cut off" levels must be established. The CDC has spent a great deal of time and effort to determine what constitutes reasonable sensitivity levels for the drugs commonly tested for. Our Legal Department and Health and Safety Department collaborated with David Johnson, M.D., Professor of Internal Medicine and Pharmacology and Chief of the Endocrinology Section at the University Medical Center, University of Arizona College of Medicine, to arrive at reasonable sensitivity levels--these are attached as Appendix A.

There are many other pieces that were we here today to talk about the
present of reasonable drug testing policies between management and the
I would go into. Since, however, my purpose here today is to urge this
to pass this modest piece of legislation, I will end my prepared remarks
at this point.

I would be pleased to answer any questions that members of the Committee
may have.

Thank you.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Dan C. Edwards".

Dan C. Edwards

APPENDIX A :

The following levels of toxicity are reasonable and shall be utilized as minimum guidelines:

Amphetamines (dextro-amphetamines, methamphetamine and phentermine);

Between 3 and 10 micrograms per mil

Barbituates (secobarbital, amobarbital, butabarbital, pentobarbital, phenobarbital):

Between 20 and 60 micrograms per mil

Benzodiazepines (diazepam, desmethyldiazepam, chlordiazepoxide, oxazepam);

Between 10 to 30 micrograms per mil

Benzoyllecgonine:

Between 6 and 60 micrograms per mil

Cannabinoids:

Between 100 and 150 nanograms per mil

Methadone:

3 to 10 micrograms per mil

Methaqualone:

50 micrograms per mil

Opiates:

Morphine: 3 micrograms per mil

Codeine: 10 micrograms per mil

Phencyclidine: between 0.6 and 6 micrograms per mil

Crisis in Drug Testing

Results of CDC Blind Study

Hugh J. Hansen, PhD; Samuel P. Caudill, PhD; D. Joe Boone, PhD

In response to questions about the reliability of the results of screening urine for drugs, we evaluated the performance of 13 laboratories, which serve a total of 262 methadone treatment facilities, by submitting prereferenced samples through the treatment facilities as patient samples (blind testing). Error rates for the 13 laboratories on samples containing barbiturates, amphetamines, methadone, cocaine, codeine, and morphine ranged from 11% to 94%, 19% to 100%, 0% to 33%, 0% to 100%, 0% to 100%, and 5% to 100%, respectively. Similarly, error rates on samples not containing these drugs (false-positives) ranged from 0% to 6%, 0% to 37%, 0% to 66%, 0% to 6%, 0% to 7%, and 0% to 10%, respectively. These blind tests indicate that (1) greater care is taken with known evaluation samples than with routine samples, (2) laboratories are often unable to detect drugs at concentrations called for by their contracts, and (3) the observed underreporting of drugs may threaten the treatment process. Drug treatment facilities should monitor the performance of their contract laboratories with quality-control samples, preferably through blind testing.

(JAMA 1985;253:2382-2387)

FROM 1972 through 1981, the Centers for Disease Control (CDC), in conjunction with the National Institute on Drug Abuse, conducted a proficiency testing (PT) program for drugs-of-abuse screening laboratories. In this program, ten drug-spiked urine samples were mailed quarterly to each participating labo-

ratory (each laboratory received 40 "mailed PT" samples per year). The participants in the program tested the samples for the requested drugs and submitted a report for grading on each quarterly survey by the cutoff date. If at least 80% of the responses were correct, the laboratory was classified as "satisfactory"; otherwise, the laboratory was classified as "unsatisfactory."

Early in the program, allegations were made that some laboratories were not subjecting mailed PT samples to the same testing procedures as their routine patient samples. These claims prompted two CDC studies in which data were collected through an alternative mode of PT—the blind

test. This mode of testing requires the use of a dedicated surrogate office to introduce the test samples into the laboratory without the laboratory's knowledge (for example, a physician's office or a drug treatment facility). In these studies (one, in 1973, with 24 laboratories, and another in 1975, with nine laboratories), results of mailed PT were compared with blind PT laboratory performance.¹ Although the percentage of drugs detected by laboratories in the two studies ranged from 76% to 100% (average, 98%) on mailed PT samples, the percentage on blind PT samples for the same laboratories testing identical samples ranged from 11% to 100% (average, 69%). Additional CDC blind studies (an initial study in 1978 conducted with the assistance of the Federal Bureau of Prisons and another in 1980 with the assistance of two treatment centers) provided results similar to those from the earlier CDC blind studies.² The percentage of drugs detected by the six laboratories ranged from 37% to 74% (average, 61%).

Supportive of the CDC blind studies, other investigators have reported on blind studies that showed error rates of a magnitude comparable with those found by the CDC. In one such study, in 1976, Gottheil et al³ reported blind testing results for a drug-screening laboratory that detected only 65% of the drugs in the samples.

From the Clinical Chemistry and Toxicology Section, Performance Evaluation Branch, Division of Technology Evaluation and Assistance (Drs Hansen and Boone), and Management Development and Consultation Division (Dr Caudill), Laboratory Program Office, Centers for Disease Control, Atlanta. Dr Hansen is now with the National Institute for Occupational Safety and Health, Centers for Disease Control, Atlanta.

Reprint requests to Centers for Disease Control, Bldg 6, Room 316, 1600 Clifton Rd NE, Atlanta, GA 30333 (Dr Boone).

Additional pages for article found in Senate exhibits.

TESTAMONY OF LYNN B. HETLAND, PhD
BEFORE THE JUDICIARY COMMITTEE OF THE
MONTANA STATE HOUSE OF REPRESENTATIVES

Amendments to Senate Bill 338

March 18, 1987

Mr. Chairman and distinguished committee members I am Dr. Lynn Hetland, a PhD Toxicologist from Billings, Montana. I am testifying on my own behalf as a concerned citizen and as a proponent of SB 338 as ammended in your current draft (which incorporates recent changes proposed by the A.C.L.U.). I have directed medical laboratories in Billings over the last ten years and in that capacity have been intimately involved with drug testing; particularly, drug screening in clinical and forensic cases. My remarks today are focused on technology-related issues and the "state of the art" of drug screening as it currently exists in 1987.

Even though our ability to detect drugs and measure their concentrations in biological specimens has evolved into a highly sophisticated and reliable science and technology, there are intrinsic limitations with drug screening tests and errors are inevitable. Sources of error include the presence of other substances in urine, contaminated specimens, mislabeled specimens, and laboratory performance errors, especially in mass screening programs.

Drug screening errors lead to two types of misinformation: false-positive and false-negative test results. A "false-positive" is the reporting of a positive result when the drug sought is not present. False-positive reactions may occur, for example, when "over-the-counter" drugs cross-react in drug screening systems (RIA & EMIT) that are designed to detect stimulants, or sedatives, or narcotics. The active ingredients

in commonly used, non-prescription, nasal decongestants and other cold and flu remedies, or minor pain medications may be misidentified as amphetamines, or marijuana, respectively.

A "false-negative" occurs when the drug of interest is present but not detected. False-negative reactions may be due to faulty specimen collection, storage and handling, or analytical error, or specimen adulteration.

Because of increased drug screening activity across our country, many existing laboratories are being flooded with samples, and new laboratories are spring^{ing} up overnight to take advantage of this lucrative market in which millions of specimens will be tested. Data from quality assurance programs suggests that drug screening performance ranges from very poor to very good. In one such study, conducted by the Center For Disease Control, in which known drugs were added to urine and submitted for analysis as "routine specimens", the error rate in laboratories ranged from 11 to 100%. Most errors were false-negatives, but false-positives were present at significant rates as well.

In view of the problems associated with drug screening procedures, the issue of independent confirmation of "positive" drug screen results is critical! All "positive" tests should be confirmed by an alternative analytic method.

Technology traps people and they begin to serve the technology more committedly than it serves them. Such entrapment is aided by a refusal to be critical in the face of flawed technological approaches. I encourage you to support SB 338 and the modifications which are before you.

Mr. Chairman, this concludes my prepared testimony.

Legislative Fact Sheet

SENATE BILL 338

"FAIRNESS IN DRUG TESTING"

SB. 338 amends existing law on the use of lie detector testing (polygraphs) to include guidelines for the use of blood and urine tests as a condition of employment (Section 39-2-714 M.C.A.).

The new section states that in order to require a blood or urine test, an employer must have reason to believe, ~~and demonstrable evidence,~~ that the employee was impaired on the job due to illegal drug use, and that his/her impairment presented a safety risk.

If this threshold is satisfied, and the employee tests positive for drugs, he/she must be allowed a "confirmatory" test and the opportunity to explain the results.

Drug testing guidelines are needed in Montana, by employees and employers alike, for the following reasons:

A. VIOLATION OF CONSTITUTIONAL STANDARDS

-blood and urine tests are considered "bodily searches" under the Fourth Amendment's prohibition against unreasonable searches and seizures.

-tests should be limited to workers who are reasonably suspected of illegal drug use on the job.

-indiscriminate testing is un-American: it is unfair to treat the innocent and guilty alike.

-Although the U.S. Constitution does not apply to private employers, the Montana Constitution guarantees a much broader protection of personal privacy and should protect our citizens against the abuses of unrestricted drug testing.

-numerous drug testing programs of public employees (firefighters, customs agents, school teachers, prison guards) have been invalidated as unconstitutional.

B. UNRELIABILITY

-the most commonly used urine test (EMIT) results in a "false positive" as much as 30% of the time.

-urine tests commonly confuse cold medications, headache remedies and even some foods for illegal drugs.

7
NR 212 # 205

-dirty specimen bottles, poor lab techniques, and mix-ups in the "chain of custody" can all result in faulty tests.

-follow-up "confirmatory" tests are rarely done, despite the fact that the employee's job is on the line.

C. UNFAIR TO EMPLOYEES

-giving a urine sample can be a humiliating and degrading experience -- the employee must urinate while being closely observed by another person -- and yet failure to take the urine test results in dismissal.

-long-time employees with good work records are being fired on the basis of a single and often inaccurate test.

-dismissals due to a "false positive" result can plague an employee for the rest of his/her working life.

-even if the result is negative, suspicion itself can cause the employee irreparable harm.

D. EMPLOYERS NEED GUIDELINES

-wrongful discharge and bad faith lawsuits are assaulting employers in increasing numbers; a growing number of these suits are filed by employees fired for what they contend were unfair or inaccurate drug tests.

-without guidelines, the employer is exposed to great liability.

-the proposed amendment will provide guidelines and reduce this risk: an employer who has followed the proposed procedures will have a good defense to these actions.

E. ISSUE OF PRIVACY

-urine tests don't measure current impairment -- job performance should be the bottom line.

-urinalysis cannot determine when a drug was ingested -- what happens on Saturday night is not the employer's business.

-people who don't use drugs may have "nothing to hide," but under our system of government they have the right to be left alone.

March 18, 1987

House Judiciary Committee
Chairman, Rep. Earl Lory
Montana State Legislature
Helena, Montana 59601

Subject: Drug Testing Legislature

Re: SB 338/02

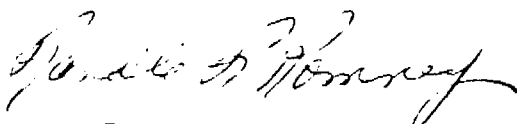
Dear Mr. Chairman:

IBM appreciates and supports your efforts to legislate standards for administration and use of drug testing by employers in the State of Montana. We are supporting efforts of a similar nature in other states at this same time. We believe that legislation such as you are considering serves a crucial role in balancing the needs of the state employers for a drug free workplace and citizen concerns over due process and individual rights.

We respectfully wanted to express our concern and reservations however over the restrictions you may be considering regarding pre-employment screening of future employees. This is an essential element in our overall company efforts to ensure a drug free workplace, and should not be limited to narrowly defined job categories. In addition, we have discovered applicant screening by employers can have a major positive effect in encouraging young applicants who are now entering the workforce to appreciate and possibly reevaluate their use of drugs in the future.

We hope you would consider amending this part of the bill. We would be willing to discuss our views directly with you if you think this would be helpful to the Committee, even though we were unable to attend your hearing today. Thank you for your consideration.

Respectfully yours,



R.R. Romney
Branch Manager
South-West Marketing Division

RRR/01HV5.31887.3

Section	Page	Page
(b) Rule compliance	750	2,000

* For the purposes of this schedule, an intentional violation is the knowing and willful taking of a carrier, its officers or agents to comply with the provisions of this part. The Administrator reserves the authority to assess the maximum penalty of \$2,500 for a violation of any section contained in Part 218.

(See 202, 301 Stat. 971 (45 U.S.C. 431); sec. 149(m) of the regulations of the Secretary of Transportation (49 CFR 1.49(m)) [49 FR 6497, Feb. 22, 1984])

PART 219—CONTROL OF ALCOHOL AND DRUG USE

Subpart A—General

Sec.

- 219.1 Purpose and scope.
- 219.3 Applications.
- 219.5 Definitions.
- 219.7 Waivers.
- 219.9 Responsibility for compliance.
- 219.11 Consent required, implied.
- 219.13 Preemptive effect.
- 219.15 Alcohol concentrations in blood and breath.
- 219.17 Construction.
- 219.19 Field Manual.
- 219.21 Information collection.

Subpart B—Prohibition

- 219.101 Alcohol and drug use prohibited.
- 219.103 Prescribed and over-the-counter drugs.

Subpart C—Post-Accident Toxicological Testing

- 219.201 Events for which testing is required.
- 219.203 Responsibilities of railroads and employees.
- 219.205 Sample collection and handling.
- 219.207 Penalty.
- 219.209 Reports of tests and refusals.
- 219.211 Analysis and follow-up.
- 219.213 Unlawful refusals; consequences.

Subpart D—Authorization to Test for Cause

- 219.301 Testing for reasonable cause.
- 219.303 Breath test procedures and safeguards.
- 219.305 Urine test procedures and safeguards.
- 219.307 Standards for urine assays.

Subpart E—Identification of Injured Employees

- 219.401 Requirement for policies.
- 219.403 Voluntary referral policy.
- 219.405 Co worker referral policy.
- 219.407 Alternate policies.

Subpart F—Pre-Employment Drug Screens

- 219.501 Pre-employment drug screens.
- 219.503 Notification; records.
- 219.505 Refusals.

APPENDIX A—SCHEDULE OF CIVIL PENALTIES

AUTHORITY: Secs. 202 and 209, Pub. L. 91-458, 84 Stat. 971 and 975, as amended (45 U.S.C. 431, 430) and 49 CFR 1.49, Subpart C also issued under sec. 208, Pub. L. 91-458, 84 Stat. 974, as amended (45 U.S.C. 437).

SOURCE: 50 FR 31568, Aug. 2, 1985, unless otherwise noted.

Subpart A—General

§ 219.1 Purpose and scope.

(a) The purpose of this part is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol or drugs.

(b) This part prescribes minimum Federal safety standards for control of alcohol and drug use. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

§ 219.3 Applications.

(a) Except as provided in paragraph (b) of this section, this part applies to—

(1) Railroads that operate rolling equipment on standard gauge track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger service in a metropolitan or suburban area (as described by Section 202(k) of the Federal Railroad Safety Act of 1970, as amended), specifically including any entity providing such service as a common carrier engaged in interstate or foreign commerce.

§ 219.5 Definitions.

As used in this part—

(a) "Alcohol" means ethyl alcohol (ethanol). References to use or possession of alcohol include use or possession of any beverage, mixture or preparation containing ethyl alcohol.

(b) "CAMI" means the Civil Aeromedical Institute of the Federal Aviation Administration. References to CAMI are to that organization's Toxicology Research Laboratory.

(c) "Controlled substance" has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR Parts 1301-1316).

(d) "Covered employee" means a person who has been assigned to perform service subject to the House of Service Act (45 U.S.C. 61-64b) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.

(e) "Covered service" means service for a railroad that is subject to the House of Service Act (45 U.S.C. 61-64b), but does not include any period the employee is relieved of all responsibilities and is free to come and go without restriction.

(f) "Co-worker" means another employee of the railroad, including a working supervisor directly associated with a yard or train crew, such as a conductor or yard foreman, but not including any other railroad supervisor, special agent or officer.

(g) "Drug" means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

(h) "EAP Counselor" means a person or persons qualified by experience, education, or training to counsel persons affected by substance abuse problems and to evaluate their progress in recovering from or control-

ing substance abuse. The EAP Counselor shall be responsible for the counseling and assessment functions in connection with standard or drug abuse evaluation or treatment. As used in these rules, an EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of the employee.

(i) "Field Manual" refers to the document described in § 219.19 of this part.

(j) "FRA" means the Federal Railroad Administration, U.S. Department of Transportation.

(k) "FRA representative" means the Associate Administrator for Safety, FRA, the Associate Administrator's delegate (including a qualified State inspector acting under Part 212 of this chapter), the Chief Counsel, FRA, or the Chief Counsel's delegate.

(l) "Hazardous material" means a commodity designated as a hazardous material by Part 172 of this title.

(m) "Impact accident" means a train accident consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. The following are not impact accidents:

(1) An accident in which the derailment of equipment causes an impact with other rail equipment; and

(2) Impact of rail equipment with obstructions such as fallen trees, rock or snow slides, livestock, etc.

(n) "Independent" means not under the ownership or control of the railroad and not operated or staffed by a salaried officer or employee of the railroad. The fact that the railroad pays for services rendered by a medical facility or laboratory, selects that entity for performing tests under this part, or has a standing contractual relationship with that entity to perform tests under this part or perform other medical examinations or tests of railroad employees does not, by itself,

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 24, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 24, 1987, at 8:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Reps. Gould and Hannah who were absent.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 338:

Rep. Rapp-Svrcek moved that SB 338 BE CONCURRED IN. Two sets of amendments were presented. Set number one was presented by the Railroad Company and it regards exempting the Railroad employees. (Exhibit A). Rep. Mercer moved the first set of amendments. Rep. Addy does not agree with exempting federal employees. Rep. Rapp-Svrcek opposed the first set of amendments. Rep. Mercer stated that either they are preexempted or not and withdrew his motion. Rep. Rapp-Svrcek moved the second set of amendments. (Exhibit B). Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Addy moved to amend page 1, line 20, by striking the language "that involve" and inserting the language "the primary responsibility of which is". Question was called and a voice vote was taken. The motion CARRIED 14-2 with Reps. Giacometto and Mercer dissenting. Rep. Addy moved to amend on page 1, line 24, by striking the language "BELIEVES" and inserting the language "has reason to believe". Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Mercer moved a clean up amendment on page 3, line 12. Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Attached Amendments). Rep. Addy moved that SB 338 BE CONCURRED IN AS AMENDED. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 338 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 181:

Rep. Miles moved that SB 181 BE CONCURRED IN. Rep. Miles moved amendments on page 2, line 11, inserting the language "for deposit in the state general fund". Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Mercer moved amendments on page 1, line 24 through line 1 of page 2, page 2, line 16, 21, and 24.

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 7-7-87

NAME	PRESENT	ABSENT	
JOHN MERCER (R)	L		
LEO GIACOMETTO (R)	L		
BUDD GOULD (R)		L	
AL MEYERS (R)	L		
JOHN COBB (R)	L		
ED GRADY (R)	L		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	L		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		L	
BILL STRIZICH (D)	L		
PAULA DARKO (D)	L		
KELLY ADDY (D)	L		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

AMENDMENTS TO SB 338, THIRD READING COPY, PREPARED FOR REP. 1987.

1. Page 1, line 1 and line 14 of page 3.
Following: "result of" on page 2, line 1 and following "cause:
by" on line 14 of page 3
Insert: "alcohol consumption or"
2. Page 2, line 4 and line 2 of page 3.
Following: "DRUG" on each line
Insert: "or alcohol"
3. Page 2, lines 6 through 8, 19, 20, and 22.
Strike: "DRUG"

ASB338a/JM/J:

STANDING COMMITTEE REPORT

MARCH 24,

57

19

Speaker: We, the Committee on JUDICIARY

Report SENATE BILL NO. 335

☐ do pass ☒ be concurred in ☒ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

Chairman

1. Page 1, line 9.

2. Page 1, line 10.

3. Page 1, line 11.

4. Page 1, line 12.

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